

## **TAX ALLOCATION AGREEMENT**

This Tax Allocation Agreement (the “Agreement”) is made as of the Effective Date, as defined below, by and between Lehman Brothers Holdings Inc., a Delaware corporation (“LBHI”), and Aurora Bank FSB, a federal savings bank and its operating subsidiaries (the “Bank”) (the foregoing collectively referred to as the “Parties” or in the singular as a “Party”).

WHEREAS, LBHI is the parent corporation of an affiliated group of corporations (the “Group”) within the meaning of §1504(a) of the Internal Revenue Code of 1986, as amended (including the regulations promulgated thereunder, the “Code”), and such Group includes the Bank;

WHEREAS, LBHI has commenced a case under chapter 11 of title 11 of the U.S. Code in the Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, LBHI and the Bank have been operating under a Tax Allocation Agreement, effective as of January 1, 2004 (the “Prior TAA”), which provides for the allocation of the Bank’s federal, state and local tax liabilities and benefits between the Parties;

WHEREAS, LBHI and the Bank entered into a Settlement Agreement, which provides for the settlement of claims relating to certain inter-company arrangements (including the Prior TAA) between the Bank, on the one hand, and LBHI and various other LBHI subsidiaries, on the other hand;

WHEREAS, among other things, the Settlement Agreement resolves and settles all claims and obligations of the Parties relating to amounts owed and obligations arising under the Prior TAA for the taxable years ended before January 1, 2010 (the “Pre-2010 Taxable Years”);

WHEREAS, at the time this Agreement is being executed and delivered the Settlement Agreement shall have become effective;

WHEREAS, in accordance with the Settlement Agreement, the Prior TAA is being terminated as of the Effective Date of this Agreement; and

WHEREAS, the Parties have agreed in the Settlement Agreement to enter into a new tax allocation agreement containing terms and conditions substantially the same as those provided herein;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

## **Section 1 -**

### **Effective Date and Scope of Tax Allocation Agreement**

**1.01 Effective Date.** This Agreement is effective as of January 1, 2010.

**1.02 Scope.** This Agreement applies to the allocation of federal, state and local tax liabilities and benefits for the taxable year beginning January 1, 2010, and for all subsequent taxable years in which the Bank is included in the consolidated U.S. federal income tax returns or in any state or local combined returns with LBHI and other members of the Group.

## **Section 2 -**

### **Agreement to File Consolidated Federal Income Tax Returns and Pay Tax**

**2.01 Agreement to File.** The Parties hereby agree that the Bank will continue to be included in the Group's consolidated U.S. federal income tax return, so long as the Bank is a member of the Group, except (if applicable) in the event that the Bank were electively deconsolidated pursuant to Treas. Reg. § 1.597-4(g).

**2.02 Elections.** All elections that are available to the Group or any of its members under the Code, relating to the filing of consolidated federal income tax returns, shall be made by LBHI at its sole discretion in determining the LBHI Group's tax liability.

**2.03 Payment of Tax.** LBHI will remit the Group's federal income tax liability to the appropriate government agency, including estimated taxes, on behalf of the Group.

## **Section 3 -**

### **Agreement to File State and Local Income Tax Returns As Appropriate**

**3.01 Filing State and Local Income Tax Returns.** The Parties hereby agree that the LBHI shall determine the methodology and format for the filing of state and local income tax returns by the Bank, including the inclusion of the Bank in combined, affiliated or consolidated returns where appropriate. Such determination shall be made by the LBHI Corporate Tax Department in accordance with the applicable statutes and rules of each particular jurisdiction.

**3.02 Elections.** As relates to any state or local combined, affiliated or consolidated income tax returns, all elections that are available to the filing group or any of its members shall be made by LBHI at its sole discretion in determining the filing group's tax liability.

## **Section 4 -**

### **Allocation of Tax Liability**

**4.01 Federal Income Tax Liability or Benefit.** The current federal income tax liability or benefit of the Bank will be computed by multiplying the Bank's separate entity taxable income or loss by 35% (or the applicable federal statutory income tax rate). LBHI's Corporate Tax Department will be responsible for the calculation of, as well as making all decisions impacting, the federal consolidated income tax return of the Group.

**4.02 Unutilized Federal Income Tax Loss or Benefit.** Should the Bank have an income tax loss or benefit that could not be utilized either currently or in a carryback year on a separate entity basis, but which is utilized in whole or part in a current or prior consolidated return, the Bank's tax liability or benefit will be adjusted accordingly.

**4.03 Consolidated Federal Alternative Minimum Tax ("AMT") Liability.** The Bank's tax liability will be adjusted to reflect, if applicable, its AMT liability on a separate entity basis. The Bank, if it has a liability for an AMT, will be entitled to an AMT credit when, and if, such credit is recognized on the Group's consolidated income tax return.

**4.04 State and Local Income/Franchise Tax Liability or Benefit.** The state and local income/franchise tax liability or benefit of the Bank will be computed based on the Bank's separate entity taxable income multiplied by the applicable jurisdiction's respective allocation factors and tax rates. A state and local income/franchise tax liability based on an alternative tax method will be allocated to the Bank to the extent it has an alternative liability on a separate entity basis. It is the intent of the Parties hereto that the concepts and methods defined in this Agreement for allocation of federal income taxes be applied in a similar manner to tax liability assessed by state and local taxing jurisdictions where there is combined tax liability between the Parties.

**4.05 2009 Net Operating Losses.** Any net operating loss of the Bank for the 2009 taxable year (the "2009 NOL") shall be treated, for federal income tax purposes, as having been carried back to pre-2009 taxable years to the extent of \$255,541,519. Any amount of the 2009 NOL in excess of \$255,541,519 shall be carried forward in calculating the Bank's federal income tax liability (or refunds) for 2010 and future years for all purposes of this Agreement. The portion of the Bank's 2009 net operating losses treated as allocable to a state or locality in which the Bank joined in filing combined returns with LBHI or other members of the LBHI Group for 2009 shall also be carried forward in calculating the Bank's tax liability (or refunds) for that state or locality for 2010 and future years for all purposes of this Agreement, but only to the extent such 2009 net operating losses allocable to that state or locality were not carried back to pre-2009 taxable years in calculating refunds for that state or locality that were included in the Tax Payment Amount (as defined in the Settlement Agreement). The net operating losses for 2009 treated as carried forward for federal, state and local tax purposes under the preceding two sentences, as well as net operating losses arising in 2010 and subsequent years, shall not be carried back to pre-2009 years for purposes of this Agreement, regardless of any election that LBHI may have as a result of any change in law or otherwise.

**4.06 Other 2009 Tax Carry Forwards.** This section shall apply if the Bank is determined to have tax benefits, other than the 2009 NOLs, including without limitation any tax credits, that could be carried forward for federal, state or local tax purposes if the Bank were filing its tax returns on a separate entity basis (“Other 2009 Carry Forwards”). In that event, the Other 2009 Carry Forwards shall be available to be used by the Bank in calculating its federal, state or local tax liabilities for 2010 and future years for all purposes of this Agreement, but only to the extent such amounts were not used in calculating the Tax Payment Amount (as defined in the Settlement Agreement).

## **Section 5 -**

### **Deferred Taxes**

**5.01 Amount of Deferred Taxes.** Deferred taxes, reflected either as an asset or liability, shall be computed by the Bank on a separate entity basis.

**5.02 No Payment for Deferred Taxes.** The Bank will not tender or accept payment relative to its separately computed deferred tax liabilities/benefits.

## **Section 6 -**

### **Refund and Payment**

**6.01 Payment of Tax.** Payments of tax by the Bank to LBHI shall equal the amount which the Bank has recorded as its current income/franchise tax liability on a separate entity basis. Estimated tax payments shall be made to LBHI by the Bank at the same time at which the Bank would have been required to tender such amount to the appropriate tax authority had it filed as a separate entity.

**6.02 Income Tax Benefit.** LBHI will pay the Bank for separate company net operating losses, capital loss carryovers, charitable contributions, Section 1231 gains and losses, general business credits, and other tax benefits (collectively, “Losses”) generated by it, that are used in the consolidated return of the Group to the extent those Losses may be utilized by the Bank on a separate return basis as follows: Should the Bank incur Losses for income tax return purposes that it could utilize currently if it filed its return on a separate entity basis, it will record a current income tax benefit. Within a reasonable time (not to exceed thirty (30) days) of the date when the Bank would have filed its return utilizing such Losses, if it had been on a separate entity filing basis, it will be entitled to receive a refund from LBHI in an amount no less than the amount of the income tax benefit derived from such Losses. This refund shall be tendered to the Bank regardless of whether the Group is receiving a refund.

## **Section 7 -**

### **Recomputations and Adjustments**

**7.01 IRS or Other Taxing Authority’s Adjustment of Group Tax Liability.** If any item of income, loss, expense, or a credit for Taxable Year 2010, or for any

subsequent taxable year for which this Agreement is in effect, is changed or adjusted by the Internal Revenue Service ("IRS") or other taxing authority, and such change or adjustment is part of a final determination, then the Parties hereby agree that the calculation of the separate tax of the Bank shall be recomputed so as to reflect such revision. Appropriate payments will be tendered by or to the Bank, if required as a result of such recomputation. The Bank will be charged or credited with interest and/or penalties resulting from such adjustments and recomputations.

**7.02 Other Recomputations.** If there is any change of or adjustment to any item relating to the computation of payments under this Agreement of a type not provided for in Section 7.01 above (such as a recomputation of amounts due hereunder to reflect a carryback of an item of loss or credit, or a correction of any erroneous calculation previously made hereunder), then the Bank shall make or receive such payments as may be necessary and appropriate to reflect the intent of this Agreement.

**7.03 Pre-2010 Taxable Years.** No recomputation or adjustment shall be made under this Agreement based on any change or adjustment of items in Pre-2010 Taxable Years, whether such changes or adjustments are made by federal or state tax authorities or otherwise. Provided, that if federal, state or local tax authorities disallow net operating losses or other tax benefits claimed by the Bank in 2010 or a subsequent year and require such items to be taken instead in 2009, any increase in the amount of the 2009 NOL or the Other 2009 Tax Carry Forwards resulting from such change or adjustment shall be carried forward from 2009 and used in calculating the tax liability (or refunds) of the Bank for 2010 and later years.

## **Section 8 -**

### **Miscellaneous Provisions**

**8.01 Foreign Tax Liabilities.** It is the intent of the Parties hereto that the concepts and methods defined herein for allocation of federal, state and local income taxes also be applied in a similar manner to any tax liability assessed by foreign taxing jurisdictions where there is a combined tax liability between the Parties.

**8.02 Basis of Certain Computations.** In calculating the Bank's taxable income for purposes of this Agreement for 2010 and any future taxable year, the Bank's tax attributes as of January 1, 2010 will be calculated in a manner consistent with the tax accounting workpapers that support the Bank's financial statements as of December 31, 2009 (regardless of any adjustment to Pre-2010 Taxable Years by any taxing authority or the Bank that would have an effect on post-2009 taxable years).

**8.03 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of the Parties hereto, but no assignment shall relieve any party's obligations hereunder without the written consent of the other party, which shall not be unreasonably withheld.

**8.04 Entire Understanding; Amendment.** This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter contained herein. This Agreement may not be amended without the written consent of each of the Parties hereto. The Parties recognize and acknowledge their intention to enter into additional agreements from time to time with respect to the allocation of taxes not covered by this Agreement.

**8.05 Governing Law; Exclusive Jurisdiction.** The validity, interpretation, and performance of this Agreement shall be controlled and construed under the laws of the State of Delaware. The parties agree that, without limiting any party's right to appeal to final decision, the appropriate and exclusive forum for any disputes between the parties arising out of this Agreement shall be the Bankruptcy Court, or, if such court will not hear any such suit, the United States District Court for the Southern District of New York, and, the parties hereto irrevocably consent to the exclusive jurisdiction of such courts, and agree to comply with all requirements necessary to give such courts jurisdiction.

**8.06 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**8.07 Termination.** Upon deconsolidation of the Bank from the Group for federal income tax purposes, this Agreement shall terminate and no further amounts shall be payable under this Agreement, except for amounts owing to the Bank or LBHI for the periods through the date of deconsolidation; provided, however, that, if the Bank continues to file on a combined, affiliated or consolidated basis with LBHI for state or local income/franchise tax purposes, this Agreement shall continue to apply in respect of such taxes.

**8.08 Compliance with Interagency Policy Statement.** The Parties intend that this Agreement shall be construed and applied in a manner that complies with the provisions of the Interagency Policy Statement on Income Tax Allocation In a Holding

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Company Structure, 63 Fed. Reg. 64757, November 23, 1998, part II, Interagency Policy Statement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date indicated below, to be effective as of the Effective Date provided above.

LEHMAN BROTHERS HOLDINGS INC.

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

AURORA BANK FSB

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date