

**FORMAL AGREEMENT BY AND BETWEEN**

**CompuBank, National Association  
Houston, Texas  
and  
The Office of the Comptroller of the Currency**

CompuBank, National Association, Houston, Texas (Bank) and the Comptroller of the Currency of the United States of America (Comptroller) wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules, regulations, and conditions imposed in connection with the granting of the Bank's charter.

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (Board), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Formal Agreement.

**ARTICLE I**

**JURISDICTION**

(1) This Formal Agreement shall be construed to be a "written agreement entered into with the agency" within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Formal Agreement shall be construed to be a "written agreement between such depository institution and such agency" within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Formal Agreement shall be construed to be a "formal written agreement" within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). See 12 U.S.C. § 1831i.

(4) This Formal Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(5) All correspondence related to this Formal Agreement, and any information, documentation, reports, plans and/or other written submissions which the Bank or Board has agreed to submit to the Deputy Comptroller pursuant to this Formal Agreement shall be forwarded, by overnight mail, to:

John A. Bodnar  
Deputy Comptroller for the Southwestern District  
Office of the Comptroller of the Currency  
500 North Akard Street, Suite 1600  
Dallas, TX 75201

with copies sent by overnight mail to:

Frank (Mickey) Hicks  
Examiner-in-Charge  
Office of the Comptroller of the Currency  
1301 McKinney Street, Suite 3750  
Houston, TX 77010

and to:

Randall Ryskamp  
District Counsel  
Office of the Comptroller of the Currency  
500 North Akard Street, Suite 1600  
Dallas, TX 75201

## **ARTICLE II**

### **REQUIRED CAPITAL INFUSIONS, CAPITAL RATIOS, AND CAPITAL PLAN**

(1) On or before February 15, 2001, the Bank shall obtain a cash capital infusion in an amount not less than \$7,000,000.00 (seven million dollars).

(2) On or before April 30, 2001, the Bank shall obtain an additional cash capital infusion in an amount not less than \$33,000,000.00 (thirty-three million dollars).

(3) On or before April 30, 2002, the Bank shall obtain an additional cash capital infusion in an amount not less than \$35,000,000.00 (thirty-five million dollars).

(4) Except as provided for in paragraph 5 below, the Bank shall achieve by February 15, 2001, and thereafter shall maintain, the following capital levels (as defined in 12 C.F.R. Part 3):

(a) Tier 1 capital at least equal to ten percent (10%) of adjusted total assets;  
and

(b) Tier 1 capital at least equal to fifteen percent (15%) of risk-weighted assets.

(5) Upon obtaining the additional cash capital infusion of not less than \$33,000,000.00 (thirty-three million dollars) as required by paragraph 2, the Bank's obligation under paragraph 4(a) shall change, and the Bank shall thereafter maintain Tier 1 capital at least equal to eight percent (8%) of adjusted total assets. If the Bank also obtains the additional cash capital infusion of \$35,000,000.00 (thirty-five million dollars) which is required under paragraph 3 on or before July 31, 2001, then the capital levels set forth in paragraph 4(a) and (4b) shall no longer be applicable, but the Bank shall at all times achieve and maintain the capital levels provided for in 12 C.F.R. Part 3.

(6) In the event that the required capital infusions referenced in paragraphs 1, 2, and 3 are insufficient to achieve, at the time of the cash infusion, the required capital levels detailed in paragraph 4, or if applicable paragraph 5, of this Article, then the Bank shall be required to

obtain additional capital infusions, in any amount(s) necessary, to return the Bank to the minimum capital levels. These additional capital infusions shall be obtained not later than thirty (30) days after the Bank's capital level falls below its required levels.

(7) The Bank shall calculate its Tier 1 capital ratios on a monthly basis, and provide a written report to the Deputy Comptroller not later than the fifteenth (15th) day of the following month.

(8) Within thirty (30) days from the effective date of this Agreement, the Board shall develop, implement, and thereafter ensure Bank adherence to a three-year capital program consistent with the requirements of paragraph 4 or, to the extent applicable paragraph 5, of this Article. The program shall include:

- (a) specific plans for the maintenance of Tier 1 capital ratios that may in no event be less than the requirements of paragraph 4 or, to the extent applicable paragraph 5;
  - (b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, and earnings;
  - (c) the primary source(s) from which the Bank will strengthen its capital structure to meet the requirements of paragraphs 2 and 3, and the Bank's future needs; and
  - (d) contingency plans that identify alternative methods of raising capital should the primary source(s) under (c) above not be available.
- (9) Upon completion, the Bank's capital program shall be submitted to the Deputy

Comptroller for approval. Upon approval by the Deputy Comptroller, the Board shall implement and thereafter ensure adherence to the capital program. The Board shall review and update the Bank's capital program on an annual basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted to the Deputy Comptroller.

(10) The Board shall ensure that the Bank has processes, personnel, and control systems in place to ensure implementation of and adherence to the program developed pursuant to this Article.

### **ARTICLE III**

#### **CONTINGENCY PLAN**

(1) On or before February 15, 2001, the Board shall develop a Contingency Plan in the event that the Bank does not receive the capital infusions required by paragraph 1 and/or paragraph 2 of Article II.

(2) The Contingency Plan shall detail the Board's proposal to sell, merge, or liquidate the Bank no later than sixty (60) days after the Bank's failure to comply with its obligations under paragraph 1 and/or paragraph 2 of Article II. Upon completion of the Contingency Plan, it shall be submitted to the Deputy Comptroller for approval.

(3) After the Contingency Plan has been approved by the Deputy Comptroller, the Board shall implement and thereafter ensure adherence to the terms of the Contingency Plan within fifteen (15) days of the Bank's failure to comply with its obligations under paragraph 1 and/or paragraph 2 of Article II.

## **ARTICLE IV**

### **ANALYSIS REGARDING FUTURE PROFITABILITY**

(1) On or before February 15, 2001, the Board shall submit a written analysis to the Deputy Comptroller detailing how the Bank will improve its earnings and accomplish its identified strategic goals and objectives, including individual responsibilities, accountability and specific time frames.

## **ARTICLE V**

### **CHANGES TO EXISTING STRATEGIC AND OPERATING PLANS**

(1) Until the Bank reports profits for four consecutive calendar quarters, the Bank shall not make any material changes in its strategic or operating plan without first securing the prior written approval of the Deputy Comptroller regarding such changes.

(2) Should the Bank desire to make a material change in its strategic or operating plan, the Bank shall provide the Deputy Comptroller with a written request for approval of such change. The request for the change shall detail, inter alia, a description of the proposed change; the reasons for the change; any contracts or agreements that relate to the proposed change; a description of the security and internal controls governing the new activity; and the impact that the proposed change will have on staffing, operating expenses, and projected profitability, as well as on the Bank's proposed balance sheet, income statement, and the status of the required capital infusions and the required minimum capital ratios.

(3) The Deputy Comptroller will act on the proposed change within thirty (30) days of receipt of the written request, unless the Deputy Comptroller determines, in his sole discretion, that additional time to evaluate the proposed change is needed.

(4) Not later than fifteen (15) days after the effective date of this Formal Agreement, the Board shall prepare a written analysis of its operating and marketing plans to determine what revisions may be required to increase efficiency and match such plans to the Bank's current and anticipated growth rates. The analysis should contain specific recommendations regarding, inter alia, communications, professional services, marketing, staffing, rent, information systems support, and other non-interest expenses. The Board shall submit the analysis to the Deputy Comptroller for his review and approval. Once approved, the Board shall implement and thereafter ensure adherence to the recommendations in the analysis.

## **ARTICLE VI**

### **DEFINITIONS**

(1) As used in this Formal Agreement, the following terms shall have the below-described meanings:

- (a) Tier 1 capital shall have that meaning as set forth at 12 C.F.R. § 3.2(c);  
and
- (b) any reference to the term "days" shall mean calendar days.

## **ARTICLE VII**

### **CONCLUDING PROVISIONS**

(1) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Formal Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(2) Any time limitations imposed by this Formal Agreement shall begin to run from the effective date of this Formal Agreement. Such time requirements may be extended in writing by the Comptroller or his duly authorized representative for good cause upon written application by the Board.

(3) The provisions of this Formal Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Formal Agreement or excepted, waived, or terminated in writing by the Comptroller.

(4) To the extent that any of the provisions of this Formal Agreement conflict with the terms found in any existing agreement between the Comptroller and the Bank, including the Decision of the Office of the Comptroller of the Currency on the Application to Charter the Bank, the provisions of this Formal Agreement shall control.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

/s/ John A. Bodnar

1-31-01

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John A. Bodnar  
Deputy Comptroller for the Southwestern District  
Office of the Comptroller of the Currency

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Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

Signed	1/24/01
_____ Frank S. Goldberg, Chairman of the Board Signed	_____ Date 1/24/01
_____ Edward J. Crawford III, Director Signed	_____ Date 1/23/2001
_____ Anthony Gorry, Director Signed	_____ Date 1-24-2001
_____ Joseph W. Kaplan, Director	_____ Date
_____ Christopher W. Kratky, Director Signed	_____ Date 1/24/01
_____ Scott J. Loftesness, Director Signed	_____ Date 1/24/01
_____ Irving Pozmantier, Director Signed	_____ Date 1-24-01
_____ Leland Putterman, Director Signed	_____ Date Jan 24, 2001
_____ George Stark, Director Signed	_____ Date 01/24/01
_____ Todd B. Strubbe, Director Signed	_____ Date 1/24/01
_____ Randall J. Wolf, Director	_____ Date