

**#2004-93**

AGREEMENT BY AND BETWEEN  
The First National Bank of Valentine  
Valentine, Nebraska  
and  
The Office of the Comptroller of the Currency

The First National Bank of Valentine, Valentine, Nebraska (“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 and regulations.

The Comptroller, through his National Bank Examiner, has examined the Bank, and his findings are contained in the Report of Examination for the examination that commenced on April 7, 2004 (“ROE”).

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 Agreement.

ARTICLE I

JURISDICTION

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

(5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to the:

Assistant Deputy Comptroller  
Grand Island Field Office  
1811 West 2nd Street, Suite 360  
Grand Island, Nebraska 68803

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) Within ten (10) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Agreement

(2) The Compliance Committee shall meet at least monthly.

(3) On at least a quarterly basis, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

(a) actions taken to comply with each Article of this Agreement; and

(b) the results of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller.

### ARTICLE III

#### CAP ON BANK LEVERAGE POSITION

(1) Effectively immediately, the Bank shall not increase the size of its leverage position.

(2) For purposes of this Agreement, "leverage position" shall be defined as the total amount of "investment securities," as defined in 12 C.F.R. § 1 ("investment securities"), or similar investments, funded through the use of Federal Home Loan Bank advances, brokered certificates of deposits, or other wholesale funds as described in the Liquidity booklet, L-L of the Comptroller's Handbook.

(3) This limitation on increasing the Bank's leverage position shall remain in effect until:

- (a) the Bank has reduced its long-term interest rate risk to a reasonable level;
- (b) the Board has developed, implemented, and ensured Bank adherence to policies and systems that effectively measure, monitor, and control the interest rate risk arising from the Bank's leverage position; and
- (c) the Bank is operating its leverage program in a safe and sound manner.

## ARTICLE IV

### LEVERAGE CONSULTANT

(1) Within thirty (30) days, the Board shall employ a qualified, independent outside consultant (“Consultant”) to review the Bank’s leverage program and thereafter advise the Board with respect to interest rate risk reduction strategies and appropriate systems to measure, monitor, and control the risks in the Bank’s leverage program.

(2) For purposes of this Agreement, “leverage program” shall be defined as the Bank’s strategy, and related policies and procedures, whereby the Bank uses Federal Home Loan Bank advances, brokered certificates of deposit, or other wholesale funds as described in the Liquidity booklet, L-L of the Comptroller’s Handbook, to fund the purchase and holding of investment securities or other similar investments.

(3) Prior to the appointment or employment of any consultant or entering into any contract with a consultant, the Board shall submit the name and qualifications of the proposed consultant and the proposed terms of employment to the Assistant Deputy Comptroller for a prior determination of no supervisory objection.

(4) The requirement to submit information and the provision for a prior determination of no supervisory objection in this Article are based on the authority of 12 U.S.C. § 1818(b) and do not require the Comptroller or the Assistant Deputy Comptroller to complete his review and act on any such information or authority within ninety (90) days.

(5) Prior to undertaking such review, the Consultant shall discuss the required scope with the Assistant Deputy Comptroller.

(6) Within sixty (60) days of employment, the Consultant shall submit a written report (“Consultant’s Report”) to the Board and the Assistant Deputy Comptroller. In preparing

the report, the Consultant shall take into consideration the overall condition of the Bank and the deficiencies in the Bank's management of its leverage program and related interest rate risk identified in the ROE, and shall refer to the Interest Rate Risk booklet, L-IRR, of the Comptroller's Handbook, and OCC Bulletin 2004-29, "Embedded Options and Long-Term Interest Rate Risk," dated July 1, 2004.

(7) The Consultant's Report shall include a description of the scope of the review. It shall also contain specific recommendations, and the specific findings on which the recommendations are based, in the following areas:

- (a) an effective process by which the Board and Bank management may measure, monitor, and control long-term interest rate risk, including but not limited to:
  - (i) appropriate tools necessary to measure the impact that decisions or changes in economic conditions may have on the Bank's balance sheet, earnings, and the economic value of equity over a period of at least five years;
  - (ii) management information systems that provide for effective risk monitoring of the Bank's leverage operations; and
  - (iii) policies to establish reasonable risk limitations and ensure Bank compliance with the limitations set by the Board;
- (b) the level of long-term risk inherent in the Bank's leverage program and strategies by which the Bank's long-term interest rate risk may be reduced to an acceptable level in a timely fashion.

(8) Within thirty (30) days of receipt of the Consultant's Report, the Board shall develop a written plan, with specific time frames, to correct any deficiencies in the Board and Bank management's supervision of the Bank's leverage program and the interest rate risk related thereto identified in the ROE or otherwise noted in the Consultant's Report.

(9) Copies of the Board's written plan and the Consultant's Report shall be forwarded to the Assistant Deputy Comptroller for a determination of no supervisory objection. The Assistant Deputy Comptroller shall retain the right to determine the adequacy of the Consultant's Report and the Board's written plan and their compliance with the terms of this Agreement.

(10) Upon receiving notice of the Assistant Deputy Comptroller's determination of no supervisory objection, the Board shall implement, and thereafter ensure Bank adherence to, the written plan. In the event the written plan, or any portion thereof, is not implemented, the Board shall immediately advise the Assistant Deputy Comptroller, in writing, of specific reasons for deviating from the plan.

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

## ARTICLE V

### INTEREST RATE RISK POLICY

(1) Within thirty (30) days of receiving the Consultant's Report, the Board shall revise, implement, and thereafter ensure Bank adherence to a written interest rate risk policy. In formulating this policy, the Board shall refer to the Interest Rate Risk booklet, L-IRR, of the Comptroller's Handbook, and OCC Bulletin 2004-29, "Embedded Options and Long-Term

Interest Rate Risk,” dated July 1, 2004. The policy shall provide for a coordinated interest rate risk strategy and, at a minimum, address:

- (a) the establishment of adequate management reports on which to base sound interest rate risk management decisions;
- (b) establishment and guidance of the Bank’s strategic direction and tolerance for interest rate risk;
- (c) implementation of effective tools to measure and monitor the Bank’s performance and overall interest rate risk profile;
- (d) employment of competent personnel to manage interest rate risk;
- (e) prudent limits on the nature and amount of interest rate risk that can be taken; and
- (f) periodic review of the Bank's adherence to the policy.

(2) Upon adoption, a copy of the written policy shall be forwarded to the Assistant Deputy Comptroller for review.

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

## ARTICLE VI

### BOARD TO ENSURE COMPETENT MANAGEMENT AND BOARD SUPERVISION

(1) Within sixty (60) days, the Board shall ensure that the Bank has competent management on a full-time basis of its leverage program and the long-term interest rate risk arising therefrom (“IRR Area”). The Board shall ensure the Bank has a management team

consisting of two or more Bank employees with the experience, ability, and depth to administer and manage the Bank's affairs in the IRR Area.

(2) Within thirty (30) days, the Board shall review the capabilities of the Bank's management to perform present and anticipated duties in the Bank's IRR Area and shall determine whether management changes should be made, including the need for additions to, or deletions from, the current management.

(3) For incumbent officers in the positions mentioned in Paragraph (1) of this Article, the Board shall, within thirty (30) days, assess each of these officers' experience, other qualifications and performance compared to the duties and responsibilities set for in the officer's written job description. If the Bank does not have a written job description identifying the duties and responsibilities of the officers in the Bank's IRR Area, the Board shall immediately develop a written job description that accurately outlines the duties and responsibilities of those positions and thereafter assess each officer's experience, other qualification and performance compared to those duties and responsibilities.

(4) If the Board determines that an officer will continue in his/her position but that the officer's depth of skills needs improvement, the Board shall, within sixty (60) days, develop and implement a written program, with specific time frames, to improve the officer's supervision and management of the IRR Area of the Bank. At a minimum the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to supervise effectively;
- (b) a program to improve the effectiveness of the officer;
- (c) objectives by which the officer's effectiveness will be measured; and



- (d) a performance appraisal program for evaluating performance according to the position's description and responsibilities.

Upon completion, a copy of the written program shall be submitted to the Assistant Deputy Comptroller.

(5) If a position mentioned in Paragraph (1) of this Article is vacant now or in the future, becomes vacant, the Board shall within thirty (30) days of such vacancy appoint a capable person to the vacant position who shall be vested with sufficient executive authority to ensure the Bank's compliance with this Agreement and the safe and sound operation of functions within the scope of that position's responsibility.

(6) Prior to the appointment of any individual to an executive officer position, the Board shall submit to the Assistant Deputy Comptroller the following information:

- (a) the information sought in the "Changes in Directors and Senior Executive Officers" booklet of the Comptroller's Corporate Manual, together with a legible fingerprint card for the proposed individual;
- (b) a written statement of the Board's reasons for selecting the proposed officer; and
- (c) a written description of the proposed officer's duties and responsibilities.

(7) The Assistant Deputy Comptroller shall have the power to disapprove the appointment of the proposed new officer. However, the lack of disapproval of such individual shall not constitute an approval or endorsement of the proposed officer.

(8) The requirement to submit information and the prior disapproval provisions of this Article are based on the authority of 12 U.S.C. § 1818(b)(6)(E) and do not require the

Comptroller to complete his review and act on any such information or authority within ninety (90) days.

(9) Within thirty (30) days, the Board shall develop and implement a written program, with specific time frames, to improve the Board's supervision of the Bank's IRR Area. At a minimum, the written program shall include an education program designed to ensure that each director has the skills and abilities necessary to effectively supervise the Bank's IRR Area. Upon completion, a copy of the written program shall be submitted to the Assistant Deputy Comptroller for a determination of no supervisory objection.

## ARTICLE VII

### ASSET/LIABILITY MANAGEMENT POLICY

(1) Within sixty (60) days of receiving the Consultant's Report, the Board shall revise, implement, and thereafter ensure Bank adherence to a written liquidity, asset and liability management policy. In formulating this policy, the Board shall refer to the Liquidity booklet, L-L, of the Comptroller's Handbook. The policy shall provide for a coordinated asset/liability management strategy and, at a minimum, address:

- (a) adequate management reports that enable the Board and management to monitor the Bank's liquidity position and maintain liquidity at an adequate level;
- (b) the liquidity, maturity and pledging requirements of the investment portfolio;
- (c) development of a liquidity contingency plan;

- (d) guidelines concerning the nature, extent, and purpose of the Bank's use of brokered deposits consistent with the Bank's overall funds management strategies;
- (e) the nature, extent and purpose of Bank borrowings;
- (f) limits on concentrations of funding sources; and
- (g) periodic review of the Bank's adherence to the policy.

Upon completion, a copy of the written policy shall be forwarded to the Assistant Deputy Comptroller.

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

## ARTICLE VIII

### INVESTMENT POLICY

(1) Within sixty (60) days of accepting the consultant's report, the Board shall revise, implement, and thereafter ensure Bank adherence to, the Bank's investment policy. The policy shall contain the basic elements of a sound investment policy consistent with regulatory guidance provided in An Examiner's Guide to Investment Products and Practices (December 1992), 12 C.F.R. Part 1, and OCC Bulletin 98-20 (April 27, 1998) and shall include:

- (a) an investment portfolio strategy that is consistent with Board approved Bank asset and liability management policies and interest rate risk tolerances;
- (b) individual and committee investment portfolio purchase and sale authority;

- (c) approval procedures that will include dollar size limits, quality limitations, maturity limitations, and concentration or diversification guidelines;
- (d) a requirement that investment securities be supported by adequate credit and interest rate risk measurement information as described in the Interest Rate Risk booklet, L-IRR, of the Comptroller's Handbook and in OCC Bulletin 98-20 (April 27, 1998);
- (e) required reviews and use of securities dealers;
- (f) periodic reports to and approval by the Board for all investment portfolio purchases and sales and strategy changes; and
- (g) monthly review by the Board's investment committee of the Bank's investment portfolio activity to ensure adherence to the investment policy and to applicable banking and securities laws and regulations.

(2) The revised investment policy shall be implemented and a copy shall be forwarded to the Assistant Deputy Comptroller.

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

## ARTICLE IX

### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall continue to maintain Tier 1 capital at least equal to eight percent (8 %) of adjusted total assets (as defined in 12 C.F.R. Part 3):

(2) The requirement in this Agreement to maintain a specific capital level means that the Bank may not be deemed to be “well capitalized” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6 pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

(3) Within one hundred twenty (120) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a three year capital program. The program shall include:

- (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1);
- (b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
- (c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
- (d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
- (e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and
- (f) a dividend policy that permits the declaration of a dividend only:
  - (i) when the Bank is in compliance with its approved capital program;
  - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
  - (iii) with the prior determination of no supervisory objection by the Assistant Deputy Comptroller.

(4) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection. Upon receiving a

determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall implement and adhere 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 Assistant Deputy Comptroller

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

## ARTICLE X

### DIVIDENDS

(1) Effective immediately, the Bank shall declare a dividend only

- (i) when the Bank is in compliance with its approved capital program;
- (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
- (iii) with the prior determination of no supervisory objection by the Assistant Deputy Comptroller.

(2) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure Bank adherence to the restrictions in this Article.

## ARTICLE XI

### STRATEGIC PLAN

(1) Within ninety (90) days, the Board shall revise, implement, and thereafter ensure Bank adherence to a written strategic plan for the Bank covering at least a three-year period. The strategic plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy,

product line development and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives and, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's present and future operating environment;
- (c) the development of strategic goals and objectives to be accomplished over the short and long term;
- (d) an identification of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in (1)(c) of this Article;
- (e) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under (1)(c) of this Article;
- (f) a management employment and succession program to promote the retention and continuity of capable management;
- (g) product line development and market segments that the Bank intends to promote or develop;
- (h) an action plan to improve bank earnings and accomplish identified strategic goals and objectives, including individual responsibilities, accountability and specific time frames;

- (i) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the period covered by the strategic plan;
- (j) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
- (k) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and
- (l) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(2) Upon completion, a copy of the plan shall be forwarded to the Assistant Deputy Comptroller for review and prior determination of no supervisory objection. After the Assistant Deputy Comptroller has advised the Bank that it does not take supervisory objection to the strategic plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the strategic plan.

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

## ARTICLE XII

### RECOGNITION OF OTHER-THAN-TEMPORARY IMPAIRMENT

(1) Within sixty (60) days, the Bank shall develop and implement policies and procedures to ensure the timely identification and ongoing monitoring of investment securities (debt and equity) with other-than-temporary impairment.



(2) The Bank's policy shall call for a quarterly written review of those securities with a fair value below amortized cost in order to evaluate whether a decline in the fair value is other-than-temporary. Such a review should encompass, as applicable, the factors specified in Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (SFAS 115), and other accounting guidance. The factors include:

- (a) whether fair value is significantly below amortized cost;
- (b) the period of time the decline has existed;
- (c) the Bank's intent and the ability to hold the security for a period of time sufficient to allow for any anticipated recovery in fair value;
- (d) downgrades in securities from investment grade to below investment grade or other sudden and significant downgrades;
- (e) the financial condition of the issuer;
- (f) whether the decline is attributable to adverse conditions specifically related to the issuer or to specific conditions in an industry or in a geographic area;
- (g) if dividends have been reduced or eliminated;
- (h) any failure to make scheduled interest or principal payments;
- (i) changes in tax laws, regulations, or other governmental policies significantly affecting the issuer; and
- (j) forecasts of economic, market or industry trends.

(3) For those securities that the Bank does not plan to hold for a sufficient period of time to recover the recorded value, or when the issuer of the security defaults, impairment in the fair value of the security will typically be considered other- than-temporary.

(4) For other securities adversely affected by the factors listed in paragraph (2), the Bank shall provide objective and verifiable evidence documenting why it should not use an other-than-temporary classification. The objective evidence shall indicate the reasons the decline in value below amortized cost is “temporary” and detail how the decline in value can reasonably be expected to be reversed. Objective evidence supporting “temporary” impairment may include the issuer's financial performance (including such factors as earnings trends, dividend payments, asset quality and specific events), the financial condition and near term prospects of the issuer, and the economic conditions and prospects for the issuer's region and industry.

(5) If the Bank determines that an impairment of a particular investment is other-than-temporary, the investment shall be written down to fair value, through earnings, in the period it occurred. Quoted market prices shall be used to support fair value, when available. If a quoted market price is not available, the estimate of fair value shall be based on the best information available in the circumstances. Once other-than-temporary impairment has been recognized, the fair value is the new cost basis of the asset. The new cost basis is not adjusted by subsequent recoveries of value at a later date.

(6) The Board shall ensure that the Bank has adequate processes, personnel, and control systems to ensure implementation of and adherence to the policy developed pursuant to this Article.

### ARTICLE XIII

#### PROGRESS REPORTING - QUARTERLY

(1) The Board shall submit quarterly progress reports to the Assistant Deputy Comptroller. These reports shall set forth in detail:

- (a) actions taken since the prior progress report to comply with each Article of the Agreement;
- (b) results of those actions; and
- (c) a description of the actions needed to achieve full compliance with each Article of this Agreement.

(2) The progress reports should also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the Report of Examination or in any future Report of Examination.

(3) The first progress report shall be submitted for the period ending October 31, 2004, and will be due within ten (10) days of that date. Thereafter, progress reports will be due within ten (10) days after the end of each subsequent three-month period running from October 31, 2004.

#### ARTICLE XIV

##### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank, or requires an extension of any timeframe within this Agreement, the Board shall submit a written request to the Assistant Deputy Comptroller asking for relief.

(2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the Assistant Deputy Comptroller to exempt the Bank from any provision, or that require an extension of any timeframe within this Agreement. All such requests shall be accompanied by relevant supporting documentation.

(3) The Assistant Deputy Comptroller's decision in granting the request is final and not subject to further review.

## ARTICLE XV

### CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or prior determination of no supervisory objection, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) 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 Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this 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 Agreement or excepted, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Agreement in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Agreement;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Agreement;
- (c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC’s exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

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

/s/ William S. Glover

William S. Glover  
Assistant Deputy Comptroller  
Grand Island Field Office

8-19-04

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.

Jerry Adamson

Signed

Date

8-19-04

Mary K. Gustafson

Signed

Date

8-19-04

Morris A. Johnson

Signed

Date

8-19-04

Kathryn M. Medlock

Signed

Date

8-19-04

Gerald W. O’Kief

Signed

Date

8-19-04

Gregg W. Perrett

Signed

Date

8-19-04

Joanne F. Shephard

Date

