

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY

In the Matter of:)
Valley Capital Bank, N.A.)
Mesa, Arizona)

CONSENT ORDER

The Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has supervisory authority over Valley Capital Bank, N.A., Mesa, Arizona (“Bank”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated October 16, 2008, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

Pursuant to the authority vested in it by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

ARTICLE I

COMPLIANCE COMMITTEE

(1) Within ten (10) days of the date of this Order, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee or controlling shareholder 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 and, in the event of a change of the

membership, the name of any new member 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 Order.

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

(3) Within thirty (30) days of the date of this Order and every thirty (30) days thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) a description of the action needed to achieve full compliance with each Article of this Order;
- (b) actions taken to comply with each Article of this Order; and
- (c) the results and status 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 within ten (10) days of receiving such report.

(5) The Board shall ensure that the Bank has the processes, personnel, competent management, and control systems necessary to ensure implementation of and adherence to the provisions of this Order.

ARTICLE II

CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by September 30, 2008, and thereafter 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 average assets;
- (b) Total risk-based capital at least equal to twelve percent (12%) of risk-weighted assets;

(2) The requirement in this Order to meet and 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 forty five (45) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to a three year capital plan (the “plan”). The plan shall include:

- (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1) of this article;
- (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 written determination of no supervisory objection by the Assistant Deputy Comptroller. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall implement and adhere to the dividend policy.

(4) Upon completion, the Bank's capital plan 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 plan. The Board shall review and update the Bank's capital plan on an annual basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted to the Assistant Deputy Comptroller.

ARTICLE III

BUSINESS AND PROFITABILITY PLAN

(1) Within forty-five (45) days of the date of this Order, the Board shall prepare a written three-year business plan that shall include a projection of major balance sheet and income statement components, and shall provide for injections of equity capital, as necessary. The business plan shall also include a written profitability plan and a detailed budget. Copies of the Bank's Profitability Plan shall be forwarded to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection.

(2) The Profitability Plan, required by paragraph (1) of this Article shall provide specific plans to bring the Bank to sustained profitability and include projections for the Bank's

overall risk profile, earnings performance, growth expectations, balance sheet mix, off-balance sheet activities, liability structure, and capital and liquidity adequacy that the Bank intends to achieve, and at a minimum, shall address or include:

- (a) a commitment to limit loan growth to ten percent (10%) per annum until the OCC determines in writing that the Bank's credit administration is satisfactory and funding sources are adequate and stable.
- (b) specific plans to establish responsibilities and accountability for the strategic planning process, new products, and proposed changes in the Bank's operating environment;
- (c) goals and quantifiable measures with specific implementation dates regarding the Bank's operating performance;
- (d) identification of the major areas and means by which the Board and management will seek to improve earnings performance, that focuses in particular on items contributing to Bank interest income, cost of funds, and non-interest expenses;
- (e) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the next three years that shall address or include consideration of the requirements of this Article that is incorporated into or replaces the Bank's budgeting process;
- (f) 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 pursuant to this Article;

- (g) systems to monitor the Bank's progress in meeting the plan's goals and objectives, including at a minimum, quarterly Board reporting and a comparison of projected performance to actual; and
- (h) an evaluation of whether current senior executive salary expenses are excessive, and whether such salaries could be reduced to improve the Bank's ability to reduce overhead and reach profitability;

(3) Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement and thereafter ensure adherence to the Bank's Profitability Plan.

ARTICLE IV

LIQUIDITY

(1) The Board shall take immediate and ongoing steps to increase the liquidity of the Bank to a level that is sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base, to include at a minimum:

- (a) enhancements to the asset/liability management policy that incorporate forward-looking risk measurements and liability concentration limits such as limits on the amount of funds that may be sourced from any individual customer or groups of customers, or liability concentration limits by instrument;
- (b) a sources and uses of funds report to assist with monitoring the funds flow in the Bank;

- (c) measures required to enhance the Bank's primary on-balance sheet liquidity;
- (d) the diversification of risk by staggering the maturities of large deposits;
- (e) the establishment of back-up wholesale funding sources;
- (f) the appointment of a senior officer to be responsible for ensuring that the Bank has adequate liquidity to meet all of the Bank's funding needs;
- (g) measures required to bring the bank into conformance with the Board's internal liquidity risk limitations; and
- (h) a contingency funding plan that forecasts funding needs and funding sources under a stressed scenario and should:
 - (i) represent management's best estimate of balance sheet changes that may result from a liquidity or credit event.
 - (ii) provide for assumptions based on the possible cumulative reductions in the primary liquidity sources.
 - (iii) identify, quantify, establish, and rank all sources of funding by preference for the various scenarios including asset side funding; liability side funding and off-balance sheet funding; and
 - (iv) ensure that administrative policies and procedures are consistent with the Board's guidance and risk tolerances.

(2) The Board shall take appropriate action to ensure adequate sources of liquidity in relation to the Bank's needs. Monthly reports shall set forth liquidity requirements and sources and establish a contingency plan.

(3) The Board shall submit a copy of the revised program required by this Article to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection.

ARTICLE V

ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within forty-five (45) days, the Board shall adopt, implement, and thereafter ensure adherence to written policies and procedures for maintaining an adequate Allowance for Loan and Lease Losses (“ALLL”) in accordance with generally accepted accounting principles. The ALLL policies and procedures shall be consistent with the guidance set forth in the Federal Financial Institutions Examination Council’s “Interagency Policy Statement on the Allowance for Loan and Lease Losses” dated December 13, 2006 (OCC Bulletin 2006-47), and shall at a minimum include:

- (a) procedures for determining whether a loan is impaired and measuring the amount of impairment, consistent with FASB Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan;
- (b) procedures for segmenting the loan portfolio and estimating loss on groups of loans, consistent with FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies;
- (c) procedures for validating the ALLL methodology;
- (d) a process for summarizing and documenting, for the Board’s review and approval, the amount to be reported in the Consolidated Reports of

Condition and Income (“Call Reports”) for the ALLL. Any deficiency in the ALLL shall be remedied in the quarter it is discovered, prior to the

(e) an estimate of inherent loss exposure on each significant credit;

(2) The program shall provide for a review of the Allowance by the Board at least once each calendar quarter. Any deficiency in the Allowance shall be remedied in the quarter it is discovered, prior to the filing of the Consolidated Reports of Condition and Income, by additional provisions from earnings. Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the Allowance.

(3) A copy of the Board's program shall be submitted to the Assistant Deputy Comptroller for review and prior written 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 program.

ARTICLE VI

CREDIT UNDERWRITING AND ADMINISTRATION

(1) Effective as of the date of this Order, the Board shall ensure that all lending officers comply with all laws, rules, regulations, Bank policies and procedures, safe and sound banking practices, and fiduciary duties.

(2) Within forty-five (45) days of the date of this Order, the Bank shall revise its loan policy to ensure, at a minimum, that the Bank may not grant, extend, renew, alter or restructure any loan or other extension of credit above \$100,000 without:

(a) documenting the specific reason or purpose for the extension of credit;

- (b) identifying the expected source of repayment in writing;
- (c) structuring the repayment terms to coincide with the expected source of repayment;
- (d) obtaining current and satisfactory credit information, including performing and documenting analysis of credit information and a detailed cash flow analysis of all expected repayment sources;
- (e) determining and documenting whether the loan complies with the Bank's Loan Policy and if it does not comply, providing identification of the exception and ample justification to support waiving the policy exception;
- (f) making and documenting the determinations made regarding the customer's ability to repay the credit on the proposed repayment terms;
- (g) analyzing loan to value ratios based on collateral type;
- (h) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable;
- (i) ensuring that, when required, credit approval presentations contain all appropriate information required to allow the Bank to make an informed decision; and
- (j) making a written determination that the loan would not violate the Bank's legal lending limit.

(3) Within forty-five (45) days of the date of this Order, the Bank shall revise its loan policy to strengthen on-going monitoring and documenting the status of its borrowers. These revisions shall include, at a minimum procedures designed to ensure:

- (a) the maintenance of up to date borrower financial information;

- (b) the maintenance of up to date guarantor financial information;
- (c) the proper maintenance of current tax returns, or, if the borrower has not filed a tax return for that year, procedures for the maintenance of tax extension forms;
- (d) the inclusion of tax liabilities in the calculation of debt-to-income calculations;
- (e) adequate collateral documentation is maintained on all borrowers; and
- (f) updated appraisals, when required or deemed necessary, are obtained in a timely manner to ensure that adequate collateral coverage is maintained.

(4) As of the date of this Order, prior to the Bank making any new loan or extension of credit, the Board, or a designated committee thereof, shall certify in writing that such loan or extension of credit is necessary to promote the best interests of the Bank and complies with the requirements of this article.

(5) Within sixty (60) days of this Order, the Board shall take the necessary steps to obtain current and satisfactory credit information on all loans above \$100,000 lacking such information, including those listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(6) Within sixty (60) days of this Order, the Board shall ensure proper collateral documentation is maintained on all loans above \$100,000 and correct each collateral exception for any loan above \$100,000 listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

ARTICLE VII

CONCENTRATIONS OF CREDIT

(1) Within sixty (60) days of the date of this Order, the Board shall develop and submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a written asset diversification program. The program shall include, but not necessarily be limited to, the following:

- (a) reasonable concentration limits based on consideration of factors such as loan type, loan purpose, loan collateral, geography, market conditions, and any other meaningful factor; All concentration limits developed pursuant to this Article must comply with OCC 2006-46 – Concentration in Commercial Real Estate.
- (b) summary reports for inclusion in Board and management reports, of existing concentrations compared with risk tolerance limits established pursuant to paragraph (1)(a) of this Article;
- (c) policies and procedures to control and monitor concentrations of credit; and
- (d) an action plan approved by the Board to reduce the Banks concentrations levels in:
 - (i) construction lending; and
 - (ii) commercial real estate lending.

(2) For purposes of this Article, a concentration of credit is as defined in the “Loan Portfolio Management” booklet of the Comptroller's Handbook.

(3) Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall immediately implement and thereafter ensure the Bank's adherence to the program required to be developed by this article.

ARTICLE VIII

PROBLEM LOAN MANAGEMENT

(1) Effective as of the date of this Order, the Board shall take immediate and continuing action to protect its interest in those assets criticized in the ROE, in any subsequent Report of Examination, by internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination.

(2) The Board's compliance with Paragraph (1) of this Article shall include the development of procedures for the monthly submission and review of problem asset reports for all criticized credit relationships totaling \$100,000 or above, that require, at a minimum, analysis and documentation of the following:

- (a) an identification of the expected sources of repayment;
- (b) the appraised value of supporting collateral and the position of the Bank's lien on such collateral where applicable as well as other necessary documentation to support the collateral valuation;
- (c) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations;
- (d) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment;

- (e) trigger dates for positive borrower actions or for loan officers to reassess the strategy and enact collection plans; and
- (f) for criticized relationships of \$100,000 or above that were made for the purpose of constructing or developing CRE, the reports shall also include:
 - (i) the initial scheduled maturity date of the loan, number of extensions and/or renewals, and current maturity date;
 - (ii) project development status;
 - (iii) a comparison of development costs to the budgeted amount;
 - (iv) a comparison of sales activity to the original sales projections;
 - (v) current market conditions and activity;
 - (vi) amount of initial interest reserve and the amount of any subsequent additions to the reserve;
 - (vii) an assessment of the borrower's global cash flow;
 - (viii) an assessment of the guarantor's ability to support the project; and
 - (ix) any other significant information relating to the project.

(3) Effective as of the date of this Order, the Bank may not extend credit, directly or indirectly, including renewals, extensions or capitalization of accrued interest, to a borrower whose loans or other extensions of credit are criticized in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination and whose aggregate loans or other extensions exceed \$100,000, unless each of the following conditions is met:

- (a) the Board or a designated committee thereof finds that the extension of additional credit is necessary to promote the best interests of the Bank and

that prior to renewing, extending or capitalizing any additional credit, a majority of the Board or a designated committee thereof approves the credit extension and documents in writing, the reasons that such extension is necessary to promote the best interests of the Bank; and

- (b) the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

ARTICLE IX

CREDIT RISK RATINGS

(1) Within forty five (45) days of the date of this Order, the Board shall develop a program to ensure that the risk associated with the Bank's loans is properly reflected and accounted for on the Bank's books and records, to include, at a minimum, provisions requiring that:

- (a) the Bank's loans and other assets are appropriately and timely risk rated and charged-off by the lending officers using a loan grading system that is based upon current facts, existing repayment terms and that is consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the *Comptroller's Handbook*;
- (b) loan officers are accountable for failing to appropriately and timely risk rate loans; and
- (c) consideration of loan officer failure to properly risk rate loans is included in periodic performance reviews and compensation.

ARTICLE X

EXTERNAL LOAN REVIEW

(1) Within sixty (60) days of the date of this Order, the Board shall employ a qualified consultant to perform quarterly asset quality reviews of the Bank. The consultant shall be utilized until such time as an ongoing internal asset quality review system is developed by the Board, implemented, and demonstrated to be effective. The external loan review system shall provide for a written report to be filed with the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the Comptroller's Handbook. Such reports shall, at a minimum, include comments and conclusions regarding:

- (a) the loan review scope and coverage parameters;
- (b) the overall quality of the loan and lease portfolios;
- (c) the identification, type, rating, and amount of problem loans and leases including grading differences;
- (d) the identification and amount of delinquent loans and leases;
- (e) credit and collateral documentation exceptions;
- (f) the identification and status of credit related violations of law, rule or regulation;
- (g) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (b) through (e) of the Article;
- (h) concentrations of credit;
- (i) loans and leases to affiliates and related parties;

(j) loans and leases not in conformance with the Bank's Loan Policy, and exceptions to the Bank's Loan Policy; and

(k) any recommendations for improvements.

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

(3) Before terminating the consultant's asset quality review services, the Board shall both certify the effectiveness of the internal asset quality review system, and receive a prior written determination of no supervisory objection from the Assistant Deputy Comptroller.

ARTICLE XI

EXTERNAL AUDIT

(1) Within forty five (45) days of the date of this Order, the Bank shall ensure that its independent Certified Public Accountant renders an opinion on the Bank's December 31, 2007, Statement of Condition ("Balance Sheet") and the Bank's Income Statement for year 2007 and for each subsequent year-end Statement of Condition and Income Statement during the term of this Order.

(2) Should the Bank's existing independent Certified Public Accountant fail to provide the opinion required by Paragraph (1) of this Article, the Bank shall take immediate action to appoint a new independent Certified Public Accountant to render an opinion on the Bank's December 31, 2007, Statement of Condition ("Balance Sheet") and its Income Statement

for year 2007 and for each subsequent year-end Statement of Condition and Income Statement during the term of this Order.

(3) Should the Bank be required to take immediate action to appoint a new independent Certified Public Accountant under Paragraph (2) of this Article, prior to the appointment or employment of any new independent Certified Public Accountant or entering into any contract with a new independent CPA to perform the auditing and accounting services required by this Article, the Board shall submit the name and qualifications of the proposed CPA and the proposed terms of employment (including the proposed engagement letter and any amendments thereto) to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection. The engagement letter shall include, at a minimum, the audit specified in paragraph (1) of this Article, as well as an annual audit of the bank.

(4) The requirement to submit information and the provision for a prior written 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/her review and act on any such information or authority within ninety (90) days.

ARTICLE XII

SELL, MERGE OR LIQUIDATE

(1) If the OCC determines in its sole judgment, that the Bank has failed to comply with the requirements of Articles III or V, then within thirty (30) days of receiving written notice from the OCC of such fact, the Bank shall develop and shall submit to the OCC for its review and prior determination of no supervisory objection, a Disposition Plan to either: (i) sell or merge the Bank, or (ii) liquidate the Bank in conformance with 12 U.S.C. § 181. The Disposition Plan

shall provide the details and specific dates for the completion of the sale, merger or liquidation of the Bank and shall be designed to avoid any loss or cost to the Bank Insurance Fund of the Federal Deposit Insurance Corporation and be in conformance with the Comptroller's Corporate Manual for Termination of National Bank Status.

(2) After the OCC has advised the Bank that it does not take supervisory objection to the Disposition Plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the Disposition Plan. Failure to submit a timely, acceptable Disposition Plan may be deemed a violation of this Order, in the exercise of the OCC's sole discretion.

ARTICLE XIII

CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the Assistant Deputy Comptroller, 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 it by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

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

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(5) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(6) The terms of this Order, 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.

IT IS SO ORDERED, this 16th day of October, 2008.

/s/

Richard Schobert
Assistant Deputy Comptroller
Arizona & New Mexico Field Office
Phoenix

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY**

In the Matter of:)
Valley Capital Bank, N.A.)
Mesa, Arizona)

**STIPULATION AND CONSENT TO THE ISSUANCE
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) is prepared to initiate administrative enforcement proceedings against Valley Capital Bank, N.A., Mesa, Arizona (“Bank”) pursuant to 12 U.S.C. § 1818(b) through the issuance of a Notice of Charges for unsafe unsound banking practices relating to the supervision of the Bank and violations of law.

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated October 16, 2008 (“Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

ARTICLE I

Jurisdiction

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(4) You are reminded that your Bank remains in “troubled condition,” as set forth in 12 C.F.R. § 5.51(c)(6), unless otherwise informed in writing by the Comptroller. In addition, this Order shall cause the Bank not to be designated as an “eligible bank” for purposes of 12 C.F.R. § 5.3(g), unless otherwise informed in writing by the Comptroller.

ARTICLE II

Agreement

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(3) The Bank also expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any

officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

ARTICLE III

Waivers

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
 - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
 - (b) any and all procedural rights available in connection with the issuance of the Order;
 - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 12 C.F.R. Part 19
 - (d) all rights to seek any type of administrative or judicial review of the Order; and
 - (e) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

Other Action

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

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

/s/

Richard Schobert
Assistant Deputy Comptroller
Arizona & New Mexico Field Office
Phoenix

10/16/08

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.

/s/

Steven Ellsworth

10/16/08

Date

/s/

Bradley Logan

10/16/08

Date

/s/

Frank Ortwine

10/16/08

Date

/s/

H. Kent Petzold

10/16/08

Date

/s/

Robert B. Stapley

10/16/08

Date

/s/

Kevin Stevenson

10/16/08

Date
