

**#2009-091**

AGREEMENT BY AND BETWEEN  
Bank of the Lakes, N.A.  
Owasso, Oklahoma  
and  
The Comptroller of the Currency

Bank of the Lakes, N.A., Owasso, Oklahoma (“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 has examined the bank through his National Bank Examiner and the Examiner’s findings are detailed within the Report of Examination (“ROE”) dated as of December 31, 2008.

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) This Agreement shall cause the Bank to be designated as 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 Agreement 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.

(6) 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  
Eastern Oklahoma Field Office  
7134 South Yale, Suite 910  
Tulsa, Oklahoma 74136

## ARTICLE II

### BOARD TO ENSURE COMPETENT MANAGEMENT

(1) Within ninety (90) days, the Board shall ensure that the Bank has competent management in place on a full-time basis in its Chief Executive Officer and President and Senior Loan Officer positions to carry out the Board’s policies, ensure compliance with this Agreement, applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Within ninety (90) days, the Board shall review the capabilities of the Bank’s management and staff to perform present and anticipated duties and the Board will determine

whether management and staff changes will be made, including the need for additions to or deletions from current management and staff.

(3) For incumbent officers in the positions mentioned in Paragraph (1) of this Article, the Board shall within ninety (90) days assess each of these officers' experience, other qualifications and performance compared to the position's description, duties and responsibilities.

(4) If the Board determines that an officer will continue in his or her position but that the officer's depth of skills needs improvement, the Board will within one hundred twenty (120) days develop and implement a written program, with specific time frames, to improve the officer's supervision and management 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 and for measuring performance against the Bank's goals and objectives.

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, including if the Board realigns an existing officer's responsibilities and a position mentioned in Paragraph (1) of this Article becomes vacant, the Board shall within one hundred

twenty (120) 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" and "Background Investigations" booklets of the Comptroller's Licensing 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.

### ARTICLE III

#### BUDGET/BUSINESS PLAN

(1) Within ninety (90) days, the Board shall prepare, implement, and thereafter ensure Bank adherence to 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 profit plan and a detailed budget. Specifically, the plan shall describe the Bank's objectives for improving Bank earnings, contemplated strategies and major capital expenditures required to achieve those objectives. Such strategies shall include specific market segments that the Bank intends to promote or develop. Procedures shall also be established to monitor the Bank's actual results against these projections and to provide for appropriate adjustments to the budget and profit plan. The plan shall set forth specific time frames for the accomplishment of these objectives.

(2) A copy of the plan 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.

(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 IV

##### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by December 31, 2009 and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

- (a) Total Risk – Based Capital at least equal to twelve percent (12%) of risk-weighted assets;

(b) Tier 1 capital at least equal to eight percent (8%) of adjusted total assets.<sup>1</sup>

(2) The requirement in this Agreement 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 thirty (30) 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) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
- (d) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and
- (e) 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 prior written request to 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.

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<sup>1</sup> Pursuant to 12 C.F.R. § 3.2(a), the Bank is required to compute and maintain its leverage ratio on the basis of actual, rather than average, total assets.

(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 V

### CRITICIZED ASSETS

(1) The Bank 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) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written program designed to eliminate the basis of criticism of assets criticized in the ROE, in any subsequent Report of Examination, or by any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination as "doubtful," "substandard," or "special mention." This program shall include, at a minimum:

(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;
- (c) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations; and
- (d) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment.

(3) Upon adoption, a copy of the program for all criticized assets equal to or exceeding two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Assistant Deputy Comptroller.

(4) 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.

(5) The Board, or a designated committee, shall conduct a review, on at least a quarterly basis, to determine:

- (a) the status of each criticized asset or criticized portion thereof that equals or exceeds two hundred fifty thousand dollars (\$250,000);
- (b) management's adherence to the program adopted pursuant to this Article;
- (c) the status and effectiveness of the written program; and
- (d) the need to revise the program or take alternative action.

(6) A copy of each review shall be forwarded to the Assistant Deputy Comptroller on a quarterly basis in a format similar to the Appendix attached hereto.

(7) The Bank may 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 of credit exceed two hundred fifty thousand dollars (\$250,000), only if each of the following conditions is met:

- (a) the Board or designated committee 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 full Board or designated committee approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank; and
- (b) a comparison to the written program adopted pursuant to this Article shows that the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

(8) A copy of the approval of the Board or of the designated committee shall be maintained in the file of the affected borrower.

## ARTICLE VI

### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) The Board shall review the adequacy of the Bank's Allowance for Loan and Lease Losses ("Allowance") and shall establish a program for the maintenance of an adequate Allowance. This review and program shall be designed in light of the comments on maintaining a proper Allowance found in the "Allowance for Loan and Lease Losses" booklet of the Comptroller's Handbook, and shall focus particular attention on the following factors:

- (a) results of the Bank's external loan review;

- (b) an estimate of inherent loss exposure on each credit in excess of two hundred fifty thousand dollars (\$250,000);
- (c) the bank's loan loss history;
- (d) trends of delinquent and nonaccrual loans;
- (e) concentrations of credit in the Bank; and
- (f) present and prospective economic conditions.

(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.

(4) 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 VII

### CREDIT RISK

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to reduce the high level of credit risk in the Bank. The program shall include, but not be limited to:

- (a) procedures for timely problem loan identification to assure proper classification of loans;
- (b) procedures to strengthen credit underwriting, particularly in the real estate construction and development portfolio;
- (c) procedures to strengthen management of lending operations and to maintain an adequate, qualified staff in all lending functional areas;
- (d) procedures for strengthening collections; and
- (e) an action plan to control loan growth in real estate concentrations and speculative lending.

(2) The Board shall submit a copy of the program to the Assistant Deputy Comptroller.

(3) At least quarterly, the Board shall prepare a written assessment of the bank's credit risk, which shall evaluate the Bank's progress under the aforementioned program.

(4) The Board shall submit a copy of this assessment 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 VIII

### CONSTRUCTION LOAN UNDERWRITING STANDARDS

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter adhere to a written program to improve its construction loan underwriting standards. The program shall include, but not be limited to, procedures for ensuring that:

- (a) market feasibility analyses are performed on construction projects;
- (b) cash flow analyses are performed on construction loan borrowers;
- (c) current rental and sales information is maintained in all construction projects;
- (d) periodic inspections are performed on all construction projects; and
- (e) all construction loans are either in conformity with the Bank's construction loan policies and procedures or in compliance with the Bank's written provisions for exceptions to loan policies and procedures.

(2) Upon completion, the Board shall submit a copy of the program 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 program developed pursuant to this Article.

## ARTICLE IX

### APPRAISALS OF REAL PROPERTY

(1) Within thirty days (30) days, the Board shall engage the services of an independent, professionally certified, or licensed appraiser(s) to provide:

- (a) a written or updated appraisal, in accordance with 12 C.F.R. Part 34, for each parcel of real property that represents primary collateral behind any extension of credit where:
  - (i) the loan was criticized in the ROE or by the Bank's internal loan review, and the most recent independent appraisal is more than twelve (12) months old; or
  - (ii) accrued interest or loan fees have been or will be added to the outstanding principal balance, and the most recent independent appraisal is more than twelve (12) months old; or
  - (iii) the loan exceeds two hundred thousand fifty dollars (\$250,000), and the most recent independent appraisal is more than twelve (12) months old.
- (b) a written appraisal on each parcel of Other Real Estate Owned where it is needed to bring the Bank into conformity with the provisions of 12 C.F.R. Part 34.

(2) The Board shall specifically instruct the appraiser(s) to comply with the requirements of 12 C.F.R. Part 34. The details surrounding any and all other instructions given to the appraiser(s) by the Bank, whether written or oral, shall be provided to the Assistant Deputy Comptroller for review prior to the appraiser(s) undertaking the actual appraisals.

(3) All such appraisals shall be completed within sixty (60) days of engagement, and certification by the Board attesting to the completion of the appraisals shall be forwarded to the Assistant Deputy Comptroller within thirty (30) days, thereafter.

(4) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule or regulation cited in the ROE and in any subsequent Report of Examination. The progress reports required by this Agreement shall include the date and manner in which each correction has been effected during that reporting period.

(5) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the ROE and shall adopt, implement, and ensure Bank adherence to adequate appraisal review policies and procedures essential for prudent underwriting and risk determination.

## ARTICLE X

### LENDING POLICY

(1) Within sixty (60) days, the Board shall review and revise the Bank's written loan policy. In revising this policy, the Board shall refer to "Loan Portfolio Management" booklet of the Comptroller's Handbook. This policy shall incorporate, but not necessarily be limited to, the following:

- (a) a provision that current and satisfactory credit information will be obtained on each borrower;
- (b) maturity scheduling related to the anticipated source of repayment, the purpose of the loan, and the useful life of the collateral;
- (c) maximum ratio of loan value to appraised value or acquisition costs of collateral securing the loan;
- (d) collection procedures, to include follow-up efforts, that are systematically and progressively stronger;

- (e) a global cash flow analysis on each borrower supplemented by borrower-supplied information;
- (f) guidelines and limitations for loans originating outside of the Bank's trade area;
- (g) guidelines for loans to insiders, including a statement that such loans will not be granted on terms more favorable than those offered to similar outside borrowers;
- (h) guidelines and limitations on concentrations of credit;
- (i) a limitation on the type and size of loans that may be made by loan officers without prior approval by the Board or a committee established by the Board for this purpose;
- (j) measures to correct the deficiencies in the Bank's lending procedures noted in any ROE;
- (k) guidelines consistent with Banking Circular 255, setting forth the criteria under which renewals of extensions of credit may be approved. At a minimum the policy shall:
  - (i) ensure that renewals are not made for the sole purpose of reducing the volume of loan delinquencies; and
  - (ii) provide guidelines and limitations on the capitalization of interest;
- (l) charge-off guidelines, by type of loan or other asset, including Other Real Estate Owned, addressing the circumstances under which a charge-off would be appropriate and ensuring the recognition of losses within the quarter of discovery; and

(m) guidelines for periodic review of the Bank's adherence to the revised lending policy.

(2) Upon adoption, the policy shall be implemented, the Board shall thereafter ensure Bank adherence to the policy, and a copy of the 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 XI

### OTHER REAL ESTATE OWNED - ACTION PLANS

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to action plans for each parcel of Other Real Estate Owned (“OREO”) to ensure that these assets are managed in accordance with 12 U.S.C. § 29 and 12 C.F.R. Part 34, Subpart E. At a minimum, the plans shall:

- (a) identify the Bank officer(s) responsible for managing and authorizing transactions relating to the OREO properties;
- (b) contain an analysis of each OREO property which compares the cost to carry against the financial benefits of near term sale;
- (c) detail the marketing strategies for each parcel;
- (d) identify targeted time frames for disposing each parcel of OREO;
- (e) establish targeted write-downs at periodic intervals if marketing strategies are unsuccessful;



- (f) establish procedures to require periodic market valuations of each property, and the methodology to be used; and
- (g) provide for reports to the Board on the status of OREO properties on at least a quarterly basis.

(2) Upon adoption, the Board shall submit a copy of the plans 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 plans developed pursuant to this Article.

## ARTICLE XII

### PROGRESS REPORTING - QUARTERLY

(1) The Board shall submit quarterly progress reports, following the initial submission of information described within each of the above Articles, to the Assistant Deputy Comptroller, Eastern Oklahoma Field Office, 7134 South Yale, Suite 910, Tulsa, Oklahoma 74136. These reports shall set forth in detail:

- (a) actions taken since the prior progress report, and cumulatively, 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 shall 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 July 31, 2009 and will be due within fifteen (15) days of that date. Thereafter, progress reports will be due within fifteen days (15) days after the quarter end.

### ARTICLE XIII

#### CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or prior written 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 or her 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) 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 Comptroller or the United States. 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(b)(1), 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. The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency 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. 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 hand on behalf of the Comptroller.

/S/  
Leigh R. Hoge  
Assistant Deputy Comptroller  
Eastern Oklahoma Field Office

6/19/2009  
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/  
\_\_\_\_\_  
Robert F. Biolchini

6/19/2009  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
C. Mike Gibson

6/19/2009  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Tom Biolchini

6/19/2009  
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Date

/S/  
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J. Roger Collins

6/19/2009  
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Date

/S/  
\_\_\_\_\_  
K. L. Willhite

6/19/2009  
\_\_\_\_\_  
Date