

AGREEMENT BY AND BETWEEN  
The National Bank of Harvey  
Harvey, North Dakota  
and  
The Comptroller of the Currency

The National Bank of Harvey, Harvey, North Dakota (“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 found unsafe and unsound banking practices relating to asset quality, credit risk management, the allowance for loan and lease losses, capital, and liquidity risk management at the Bank.

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  
Minneapolis Field Office  
222 South 9th Street, Suite 800  
Minneapolis, MN

## ARTICLE II

### PARTICIPATIONS PURCHASED

(1) The Board shall, within ninety (90) days, develop, implement, and thereafter ensure Bank adherence to written procedures to ensure that the Bank appropriately controls and monitors purchased participation loans. The Board should ensure that management:

- (a) monitors participation loans on a quarterly basis in a manner consistent with safe and sound banking practices, the guidelines set forth in Banking Circular 181 (Revised), dated August 2, 1984, and the requirements of 12 C.F.R. Part 34;
- (b) obtains and analyzes current and satisfactory credit and collateral information, including cash flow analysis where loans are to be repaid from operations;

- (c) maintains full current and satisfactory credit information to support purchased loans for the full life of the loan;
- (d) assigns accurate risk ratings and appropriate impairment reserves; and
- (e) ensures compliance with the Bank's lending policies, including concentration limits established by the Board.

(2) Upon adoption, a written description of the program called for in this Article shall be forwarded to the Assistant Deputy Comptroller for review and determination of no supervisory objection.

### ARTICLE III

#### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within ninety (90) 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) ("Interagency Statement") 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 that are consistent with FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies, and address the nine qualitative factors set forth in the Interagency Statement;
- (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 between the ALLL balance as determined by the analysis required by this Article and the Bank's actual ALLL balance, regardless of the amount of such deficiency, shall be remedied through additional provision expense in the quarter it is discovered, prior to the filing of the Call Reports.

#### 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) Tier 1 capital at least equal to nine percent (9%) of adjusted total assets,<sup>1</sup> and
  - (b) Total Risk Based Capital of at least eleven and a half percent (11.5%) of risk-weighted assets.

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<sup>1</sup> Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure used for Call Report purposes minus end-of-quarter intangible assets.

(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 ninety (90) 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 (c) 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 the prior written 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.

## ARTICLE V

### CONTINGENCY FUNDING PLAN

(1) Within ninety (90) days, the Board shall adopt, implement, and ensure adherence to a comprehensive Contingency Funding Plan that, on a **monthly** basis, forecasts funding needs and funding sources under different stress scenarios which represent management's best estimate of balance sheet changes that may result from a liquidity or credit event. Each scenario should include a minimum of **twelve months** of projected cash flows. The contingency funding plan shall include:

- (a) specific plans detailing how the Bank will comply with restrictions or requirements set forth in this Agreement and 12 U.S.C. § 1831o, including the restrictions against brokered deposits in 12 C.F.R. § 337.6;
- (b) the preparation of reports which identify and quantify all sources of funding and funding obligations under best case and worst case scenarios, including asset funding, liability funding, and off-balance sheet funding; and
- (c) procedures which ensure that the Bank's contingency funding practices are consistent with the Board's guidance and risk tolerances.

## ARTICLE VI

### VIOLATIONS OF LAW

(1) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule or regulation cited in the Report of Examination (“ROE”) dated as of March 31, 2009, and in any subsequent ROE. The Board shall submit quarterly progress reports to the Assistant Deputy Comptroller detailing the date and manner in which each correction has been effected during that reporting period until all violations cited in the ROE have been corrected.

(2) 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 general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules, and regulations applicable to their areas of responsibility.

(3) Within sixty (60) days of receipt of any subsequent ROE which cites violations of law, rule, or regulation, 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 general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules, and regulations applicable to their areas of responsibility.

(4) Upon adoption, a copy of these procedures shall be promptly forwarded to the Assistant Deputy Comptroller.

## ARTICLE VII

### 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/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) 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 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.

