

**#2010-031**

AGREEMENT BY AND BETWEEN  
Winona National Bank  
Winona, MN  
and  
The Comptroller of the Currency

Winona National Bank, Winona, MN (“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 loan and investment portfolio 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) 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 S. Ninth Street, Suite 800  
Minneapolis, MN 55402

## ARTICLE II

### RECOGNITION OF OTHER-THAN-TEMPORARY IMPAIRMENT

(1) The Bank has developed and submitted to the Assistant Deputy Comptroller (“ADC”) policies and procedures designed to ensure the timely recognition of Private Label Collateralized Mortgage Obligations (“PLCMOs”) with other-than-temporary impairment. The Bank shall implement and adhere to such policies and procedures.

(2) The Bank’s policy requires an independent quarterly written review of its PLCMOs 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 shall encompass, as applicable, the factors specified in Financial Accounting Standards Board Accounting Standards Codification Section 320-10-34, “Investments -- Debt and Equity Securities – Overall – Subsequent Measurement” and other applicable accounting guidance.

(3) For those PLCMOs with a fair value below amortized cost for which the Bank is not recognizing other-than-temporary impairment, the Bank must obtain objective and verifiable evidence documenting why the securities are not other-than-temporarily impaired. The objective evidence must indicate the reasons why the decline in fair value below the amortized cost basis is “temporary” and detail how the decline in fair value can reasonably be

expected to be reversed. Objective evidence supporting “temporary” impairment may include the financial performance of the security (including such factors as historical and projected default rates, prepayment speeds and loss severities), and relevant economic conditions and prospects.

(4) If the Bank determines that a particular investment is other-than-temporarily impaired, the Bank shall recognize impairment in accordance with GAAP.

### ARTICLE III

#### CAPITAL PROGRAM and HIGHER MINIMUMS

(1) The Bank shall achieve by June 30, 2010 and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

- (a) Total capital at least equal to twelve percent (12%) of risk-weighted assets;
- (b) Tier 1 capital at least equal to eight and one half percent (8.5%) of adjusted total assets.<sup>1</sup>

(2) Within ninety (90) days, the Bank shall develop a three-year capital program, and thereafter the Bank shall implement and adhere to the 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;

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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

- (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 prior approval by the Assistant Deputy Comptroller.

(3) 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 IV

##### CRITICIZED ASSETS

(1) The Bank shall take immediate and continuing action to protect its interest in those assets criticized as "doubtful", "substandard", or "special mention" in the Report of Examination dated as of March 31, 2009("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 (“Criticized Assets”).

(2) Within ninety (90) days, the Bank shall adopt individual workout plans designed to eliminate the basis of criticism of the Criticized Assets. The Bank shall thereafter implement and adhere to such workout plans. Each workout plan shall include, at a minimum:

- (a) an identification of the expected sources of repayment;
- (b) the current 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 a global cash flow analysis of the borrower’s repayment ability; and
- (d) actions designed to eliminate the basis of criticism of and protect the bank’s interest in the asset, including timeframes for implementing and evaluating the effectiveness of those actions.

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

(4) 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 and fifty thousand dollars (\$250,000);
- (b) the Bank’s adherence to the workout plans adopted pursuant to this Article;
- (c) the status and effectiveness of the plans; and

(d) the need to revise the plans or take alternative action.

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

(6) The Bank may extend credit, directly or indirectly, including renewals or extensions, to a borrower whose loans or other extensions of credit are Criticized Assets and whose aggregate loans or other extensions exceed two hundred and fifty thousand dollars (\$250,000) only if each of the following conditions is met:

(a) the Board or designated committee finds, in writing, that the extension of additional credit will promote the best interests of the Bank and will not compromise the Board's formal plan to collect or strengthen the Criticized Asset; and

(b) prior to renewing or extending any additional credit, the renewal or extension is approved by a majority of the full Board (or its designated committee) if the aggregate credit exceeds \$500,000, or by a majority of the management loan committee if the aggregate credit exceeds \$250,000 but is less than \$500,000.

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

## ARTICLE V

### PROBLEM LOAN IDENTIFICATION

(1) Within ninety (90) days, the Bank shall have in place appropriate policies and procedures designed to ensure that the Bank's internal risk ratings, as assigned by responsible loan officers and the independent loan review, are timely, accurate and consistent with the

regulatory classifications of credit criteria set forth in the Rating Credit Risk Booklet of the Comptroller's Handbook.

(2) Within ninety (90) days, the Bank shall have in place appropriate policies and procedures designed to ensure that any credit relationship exceeding \$100,000 with a high probability of payment default or other well-defined weakness is rated no better than Substandard, unless the loan is secured by marketable collateral, or cash, consistent with the guidance in the Rating Credit Risk Booklet of the Comptrollers Handbook.

## ARTICLE VI

### LENDING POLICY

(1) The Bank has revised its written loan policy and forwarded a copy to the ADC for review. In revising this policy, the Board has referred to "Loan Portfolio Management" booklet of the Comptroller's Handbook and the OCC's April 9, 2008 memorandum "Summary of Key Principles for Commercial Real Estate".

(2) The Bank shall implement and adhere to the policy.

## ARTICLE VII

### CREDIT AND COLLATERAL EXCEPTIONS

(1) Within ninety (90) days the Bank shall obtain current and satisfactory credit information on all loans 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.

(2) Within ninety (90) days the Bank shall have in place appropriate policies and procedures designed to ensure that proper documentation is maintained on all loan collateral and that all reasonable measures are taken to correct each collateral exception 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.

(3) If the Bank is unable to obtain the information or maintain the documentation required in paragraphs (1) or (2), the Bank will document the efforts and the reasons it is unable to comply with paragraph (1) or (2).

## ARTICLE VIII

### ALLOWANCE FOR LOAN AND LEASE LOSSES

The Bank has developed and submitted to the ADC written policies and procedures for maintaining an adequate Allowance for Loan and Lease Losses (“ALLL”) in accordance with generally accepted accounting principles, and 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”). The Bank shall implement and adhere to the policies and procedures.

## ARTICLE IX

### NONACCRUAL LOANS

(1) Within ninety (90) days, the Bank shall adopt and implement written policies and procedures governing the supervision and control of non accrual loans. Such policies and procedures shall:

- (a) be consistent with the accounting requirements contained in the Call Report Instructions;



- (b) address the circumstances under which accrued interest due on a loan may be added to the outstanding principal amount when the loan is renewed or restructured; and
- (c) require the monthly presentation to the Board or a designated committee of all loans meeting any of the nonaccrual criteria.

(2) Within ninety (90) days, the Bank shall develop and implement a written policy governing the identification of and accounting treatment for nonaccrual loans. The policy shall address paragraph one (1) above as well as the comments on page nine (9) of the ROE and shall be consistent with the accounting requirements contained in the Call Report Instructions.

(3) Upon adoption, a copy of the written policies and procedures shall be forwarded to the Assistant Deputy Comptroller and the Bank shall thereafter adhere to all policies and procedures developed pursuant to this Article.

## ARTICLE X

### MANAGEMENT INFORMATION SYSTEMS FOR THE AUTO PORTFOLIO

(1) Within thirty (30) days, the Bank shall develop, implement and thereafter adhere to a written program establishing an effective management information system (MIS) which facilitates risk identification, establishes controls, and delivers accurate information for timely review regarding the Universal Special Auto Finance (USA-F) auto portfolio, and establishing effective reporting mechanisms to guide decisions. The program shall include procedures for:

- (a) expediting the timely receipt of current information;
- (b) establishing controls to ensure the accuracy of information;

- (c) ensuring that data are processed and compiled uniformly to facilitate meaningful loss and delinquency analysis;
  - (d) generating periodic reports, on at least a monthly basis, which allow for monitoring of portfolio repayment and contractual performance;
  - (e) requiring prompt charge-off of loans that meet the criteria established in OCC Bulletin 2000-20 “Uniform Retail Credit Classification and Account Management Policy”; and
  - (f) producing any other information determined necessary to effectively supervise the USA-F portfolio.
- (2) The program shall include designation of a senior officer to coordinate its execution.
- (3) The Bank shall submit a copy of the program to the Assistant Deputy Comptroller.

## ARTICLE XI

### NEW AND EXISTING PRODUCTS AND SERVICES

- (1) Prior to the Bank’s involvement in any new products or services, or the material expansion of any existing products and services, the Bank shall prepare a written analysis of said product or service consistent with the analysis recommended in OCC Bulletin 2004-20 “Risk Management of New, Expanded, or Modified Bank Products and Services,” May 10, 2004. The analysis shall, at a minimum, include the following:
- (a) An assessment of the risks and benefits of the product or service to the Bank;
  - (b) an evaluation of the adequacy of the Bank’s organizational structure, staffing, MIS, internal controls and written policies and procedures to

identify; measure, monitor, and control the risks associated with the product or service; and

(c) a profitability analysis, including growth projections and interest rate risk.

(2) A copy of the analysis prepared pursuant to paragraph (1) shall be submitted to the ADC for her prior determination of no supervisory objection before entering or materially expanding a product or service.

## ARTICLE XII

### VIOLATIONS

(1) Within sixty (60) days, the Bank 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 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.

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

## ARTICLE XIII

### CLOSING

(1) Although the Bank 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 directing the 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, except those limitations based upon future reports or other events, which shall begin to run from the applicable report or event. 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 Bank is required to ensure adherence to, and undertake to perform certain obligations, 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.

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

/s/  
\_\_\_\_\_  
Sheila Van Ornum  
Assistant Deputy Comptroller  
Minneapolis Field Office

2/11/2010  
\_\_\_\_\_  
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/ Daniel H. Arnold	2/11/2010 Date
Heather A. Bach	Date
Scott B. Birdsall	Date
/s/ Sandra L. Burke	2/11/2010 Date
/s/ Keith A. DauSchmidt	2/11/2010 Date
/s/ Kent A. Gernander	2/11/2010 Date
/s/ Beth M. Hoven	2/11/2010 Date
/s/ Thomas G. Kieffer	2/11/2010 Date
/s/ Jack J. Richter	2/11/2010 Date
/s/ James L. Schneider	2/11/2010 Date
/s/ Rachelle H. Schultz	2/11/2010 Date