

AGREEMENT BY AND BETWEEN
First National Bank
Hays, Kansas
and
The Comptroller of the Currency

First National Bank, Hays, Kansas (“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.

On or about September 10, 2008, the Comptroller, through his authorized representative, and the Bank, by and through its duly elected and acting Board of Directors (“Board”), entered into a Formal Agreement designed to address certain unsafe or unsound practices relating to supervision of the affairs of the Bank (the “September 10, 2008 Formal Agreement”).

During an examination that began on or about September 14, 2009, the Comptroller’s National Bank Examiners discovered additional issues and unsafe or unsound practices relating to management and supervision of the bank’s operating subsidiaries, strategic planning, credit underwriting and administration, and the Bank’s Allowance for Loan and Lease Losses methodology.

In consideration of the above premises, it is agreed, between the Bank, by and through its 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

REPLACEMENT OF SEPTEMBER 10, 2008 FORMAL AGREEMENT

(1) The articles of the September 10, 2008 Formal Agreement are replaced and superseded in their entirety by this Formal Agreement.

Article II

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 not be construed to be a “written agreement, order, or capital directive” within the meaning of 12 C.F.R. § 6.4.

Article III

COMPLIANCE COMMITTEE

(1) Within ten (10) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee 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 Agreement.

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

(3) Beginning on February 28, 2010, and every three months 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 Agreement;
- (b) actions taken to comply with each Article of this Agreement; 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) 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:

Michael G. Koll, Sr.
Assistant Deputy Comptroller
Kansas City--North Field Office
7101 College Boulevard, Suite 1600
Overland Park, Kansas 66210

(6) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policies, procedures and programs required by this Agreement.

Article IV

MANAGEMENT AND BOARD SUPERVISION OF OPERATING SUBSIDIARIES

(1) Within sixty (60) days, the Board and senior management shall develop, maintain and implement a written operating plan for each subsidiary of the Bank. Each plan shall be reviewed and updated at least annually and shall include the following information, at a minimum:

- (a) an inventory of the products and services offered by the subsidiary;
- (b) a capital plan which identifies and justifies the appropriate level of capital for the operating subsidiary, includes systems to monitor capital levels, and identifies sources of additional capital;
- (c) a funding plan identifying the level of liquidity needed to support the operating subsidiary's activities;
- (d) a plan to ensure the subsidiary operates with accurate accounting systems that produce accurate financial statements;
- (e) a description of the audit and internal controls program with emphasis on controls over significant business functions;
- (f) a description of the operating subsidiary's Information Technology ("IT") program and development of a compliance plan for applicable IT laws and regulations;
- (g) an identification of relevant laws and regulations governing the operating subsidiary's activities and formulation of a compliance program to comply with the applicable laws and regulations;

- (h) an assessment of all risks associated with the Bank’s subsidiaries, including an assessment of what level of profit is appropriate to justify such risk and whether the subsidiary can reasonably be expected to generate such profit; and
- (i) a summary of risk mitigation activities, to include insurance and bonding coverage and justification of the bond/insurance coverage levels selected.

(2) Upon completing the plans required pursuant to Paragraph (1) of this Article, copies of the plans shall be forwarded to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection. Upon receipt of a prior written determination of no supervisory objection, the Bank shall ensure that all subsidiaries operate in accordance with their respective plans.

Article V

STRATEGIC PLAN

- (1) Effective immediately, the Bank shall only declare dividends:
 - (a) when the Bank is in compliance with the Bank’s Three-Year Plan;
 - (b) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
 - (c) with the prior written approval from the Assistant Deputy Comptroller.
- (2) Within sixty (60) days, the Board shall amend its written strategic plan developed pursuant the September 10, 2008 Formal Agreement, as necessary, to comply with the requirements of this Article (modified plan hereafter referred to as the “Bank’s Three-Year Plan”), complete with specific timeframes that incorporate the strategic and other requirements of this Article. Copies of the Bank’s Three-Year Plan shall be forwarded to the Assistant Deputy

Comptroller for a prior written determination of no supervisory objection. Upon receipt of a prior written determination of no supervisory objection, the Board shall immediately implement and thereafter ensure adherence to the Bank's Three-Year Plan, and amendments thereto, as provided for below, as modified by the Assistant Deputy Comptroller, if appropriate.

(3) The Bank's Three-Year Plan shall establish objectives and projections for the Bank's overall risk profile, earnings performance, growth expectations, balance sheet mix, off-balance sheet activities, liability structure, capital and liquidity adequacy, product line development and market segments the Bank intends to promote or develop, together with strategies to achieve those objectives, that are specific, measurable, and verifiable. At a minimum, the Bank's Three-Year Plan shall address or include:

- (a) an assessment of the Bank's present and future operating environment;
- (b) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (c) the development of strategic goals and objectives to be accomplished over the short and long term, including focusing on improving trends in asset quality, reducing the level of concentrations of credit, and improving earnings;
- (d) specific plans to establish responsibilities and accountability for the strategic planning process, new products, loan growth, proposed changes in the Bank's operating environment, and reduction of problem assets;
- (e) recognition that the Bank cannot offer or introduce new products, create or purchase any new subsidiaries, or enter new market segments until it adopts and implements appropriate risk management systems and receives

prior written determination of no supervisory objection from the Assistant Deputy Comptroller;

- (f) a dividend policy that only permits the declaration of a dividend in accordance with Paragraph (1) of this Article;
- (g) specific plans for the maintenance of adequate capital as required by the OCC and sufficient to be well capitalized under 12 C.F.R. Part 6;
- (h) the primary source(s), especially those that are not credit sensitive, from which the Bank will maintain a capital structure sufficient to meet the Bank's needs;
- (i) contingency plans that identify alternative capital sources should the primary source(s) under Subparagraph (g) not be available;
- (j) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the next three years;
- (k) an assessment of the Bank's current operating environment, and in light of the Bank's current operating environment, plans to reduce problem loans, improve earnings, and assess the viability of the Bank's subsidiaries;
- (l) provisions requiring the Bank's Three-Year Plan be amended, as needed, to reflect changes in the Bank's operating environment, and provisions requiring Board approval to ensure the appropriateness of such changes;
- (m) provisions addressing the requirements of this Agreement, which were not addressed in the September 10, 2008 Formal Agreement;

- (n) systems to monitor the Bank's progress in meeting the plan's goals and objectives;
- (o) monthly progress reports comparing actual results to defined targets for Board review; and
- (p) specific processes to hold management accountable for explaining significant deviations from targeted results and identifying options to achieve targeted results.

(4) The Bank's Three-Year Plan shall consider the Bank's current condition as well as current economic conditions as a starting point, and shall contain realistic projections in light of these conditions.

Article VI

NEW PRODUCTS, SERVICES, AND THE ESTABLISHMENT OF NEW OR ADDDITIONAL BRANCHES

(1) Prior to the Bank's involvement in any new products, services, or the establishment of any new or additional branch, as that term is defined in 12 C.F.R. § 5.30-- whether offered through the Bank, an operating subsidiary, or an investment partner--the Board shall prepare a written analysis of said product, service, or branch. 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 explanation of how the product or service is consistent with the Bank's Three-Year Plan;

- (c) 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;
- (d) a detailed explanation of how the Bank will ensure the products or services comply with all applicable laws and regulations; and
- (e) a profitability analysis, including growth projections, interest rate risk, and impact on capital.

(2) Prior to the Bank's involvement in the new product or service, a copy of the analysis shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection.

Article VII

COMMERCIAL & AGRICULTURAL CREDIT UNDERWRITING AND ADMINISTRATION

(1) Effective as of the date of this Agreement, 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 sixty (60) days, the Board shall develop and submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a program (including revisions to policies and procedures) designed to improve the Bank's underwriting and administration practices. The program shall include, at a minimum, policies and procedures to ensure that:

- (a) the Bank does not grant, extend, renew, alter or restructure any commercial or agricultural loan or other extension of credit, equal to or exceeding two hundred thousand dollars (\$200,000), without:
- (i) documenting the specific reason or purpose for the extension of credit;
 - (ii) identifying the expected source of repayment in writing;
 - (iii) structuring the repayment terms to coincide with the expected source of repayment and the useful life of the collateral;
 - (iv) 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, to include all direct and indirect obligations and personal expenses;
 - (v) providing an accurate risk assessment grade and proper accrual status for each credit;
 - (vi) obtaining an appraisal or evaluation as appropriate;
 - (vii) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable;
 - (viii) performing and documenting the review of real estate appraisals at the time of the underwriting process; and
 - (ix) obtaining the written approval of the Bank's Loan Committee or Board.

- (b) modification of the Bank's commercial and agricultural lending policy to ensure that all the lending staff consistently, accurately and thoroughly analyze and assess all primary and secondary repayment sources for loans, including but not limited to:
 - (i) assessing the potential impact of any contingent liabilities;
 - (ii) obtaining documentation to verify liquid assets;
 - (iii) conducting a global cash flow analysis;
 - (iv) consideration of projects financed elsewhere; and
 - (v) integrating multiple partnership and corporate tax returns, business financial statements, K-1 forms, and individual tax filings.
- (c) standards are developed for when exceptions are appropriate, what factors should exist to mitigate exceptions;
- (d) procedures to ensure that all policy exceptions are tracked and that management periodically prepares reports of all exceptions for the Board, including at a minimum:
 - (i) identification of the level and trend of policy exceptions, including credit, financial, documentation, and collateral exceptions;
 - (ii) tracking of exceptions by number, dollar amount, and by responsible loan officer; and
- (e) provisions for holding individual loan officers accountable for compliance with the program, policies, and procedures required by this Article.

(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 program, policies, and procedures required by this Article.

(4) The Board shall obtain current and satisfactory credit information on all loans lacking such information, including those listed in the Report of Examination conducted as of June 30, 2009, within sixty (60) days from the effective date of this Agreement; in any subsequent Report of Examination within thirty (30) days from the issuance of such Report; in any internal or external loan review within thirty (30) days from the completion of such review; or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination within thirty (30) days of receipt of such listing. The Board shall maintain a list of any credit exceptions that have not been corrected within the timeframes discussed above. This list shall include an explanation of the actions taken to correct the exception, the reasons why the exception has not yet been corrected, and a plan to correct the exception.

(5) The Board shall ensure proper collateral documentation is maintained on all loans. Within sixty (60) days of notification, the Board shall obtain any missing collateral documentation described in the Report of Examination conducted as of June 30, 2009; in any subsequent Report of Examination within thirty (30) days from the issuances of such Report; in any internal or external loan review within thirty (30) days from the completion of such review; or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination within thirty (30) days from the receipt of such listing. The Board shall maintain a list of any collateral exceptions that have not been corrected within the timeframes discussed above. This list shall include an explanation of the

actions taken to correct the exception, the reasons why the exception has not yet been corrected, and a plan to correct the exception.

Article VIII

CREDIT RISK RATINGS AND NONACCRUAL RECOGNITION

(1) Within sixty (60) days, the Board shall develop a program to ensure 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) the Bank's loans and other assets are timely placed on nonaccrual by the lending officers in accordance with the guidelines set forth in the Call Report Instructions;
- (c) the President, Executive Vice President, members of the approving loan committees, and loan officers receive immediate training with respect to the application of Subparagraphs (a) and (b) of this Article;
- (d) loan officers, members of the approving loan committees, and senior management are held accountable for failing to appropriately and timely risk rate and/or place loans on nonaccrual;

- (e) loan officer failure to properly risk rate and/or place loans on nonaccrual is considered in periodic performance reviews and compensation; and
 - (f) independent validation of the risk rating process.
- (2) After the Board has developed the program required by this Article, the Board shall immediately implement, and shall thereafter ensure adherence to its terms.

Article IX

EXTERNAL LOAN REVIEW

(1) Within sixty (60) days, the Board shall employ a qualified consultant to perform semi-annual asset quality reviews of the Bank's loan portfolio. 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 identification, type, rating, and amount of problem loans and leases;
- (b) the identification and amount of delinquent and nonaccrual loans;
- (c) the identification/status of credit related violations of law or regulation;
- (d) loans not in conformance with the Bank's lending policies;
- (e) credit underwriting and documentation exceptions;
- (f) credit analysis and documentation of such;
- (g) accuracy of internal risk ratings; and
- (h) overall credit administration practices.

(2) Prior to the appointment or employment of any individual as loan review consultant or entering into any contract with any 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. After the OCC has advised the Bank that it does not take supervisory objection to the loan review consultant or the scope of the review, the Board shall immediately engage the loan review consultant pursuant to the proposed terms of the engagement.

(3) The Board or a designated committee shall ensure the accuracy of the loan review's conclusions and that the loan review program is itself a reliable alert system for credit risk problems.

(4) The Board or a designated committee shall review the independent loan review reports and ensure that, if appropriate, immediate, adequate, and continuing remedial action, is taken based upon the findings noted in the reports.

(5) The Bank shall not terminate the consultant's asset quality review services without a prior written determination of no supervisory objection from the Assistant Deputy Comptroller.

Article X

ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within sixty (60) days, the Board shall revise, 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 include, but not be limited to:

- (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) procedures to ensure that the estimation of credit losses considers the relevant qualitative and environmental factors, with particular focus on the following:
 - (i) trends in the Bank's internal risk ratings, delinquent and nonaccrual loans;
 - (ii) results of the Bank's external loan review, conducted pursuant to Article IX of this Agreement;
 - (iii) concentrations of credit in the Bank;
 - (iv) present and prospective economic conditions; and
 - (v) applicable experience of the Bank's lending staff.

(2) The program shall provide for a process for summarizing and documenting, for the Board's review and approval, the amount to be reported in the Call Reports for the ALLL.

Any deficiency in the ALLL shall be remedied in the quarter it is discovered, prior to the filing of the Call Report, 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 ALLL.

Article XI

INFORMATION TECHNOLOGY

(1) The Board shall immediately take all steps necessary to improve the management of the IT activities of the Bank and its subsidiaries (hereinafter collectively referred to as “the Bank”), and to correct each deficiency cited in the Report of Examination conducted as of December 31, 2007, in any subsequent Report of Examination, by any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination..

(2) The Board shall continue to ensure adherence to its comprehensive, written information security program, adopted pursuant to the September 10, 2008 Formal Agreement, to ensure the safety and soundness of the Bank’s operations and to support its efforts to comply with 12 C.F.R. Part 30, Appendix B, Safeguarding Customer Information. The information security program shall include administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the Bank’s customer information. The information security program shall be consistent with the security process described in the “Information Security” booklet of the FFIEC Information Technology Examination Handbook. At a minimum, the information security program shall include:

- (a) a corporate-wide assessment of the risks to the Bank's customer information or customer information systems and a written report evidencing such assessment. The assessment shall include:
 - (i) the identification of reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;
 - (ii) an assessment of the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
 - (iii) an assessment of the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.
- (b) a process to monitor and control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the Bank's activities; and
- (c) a test plan that provides for regular testing of key controls, systems and procedures of its information security program. The frequency and nature of such tests shall be determined by the risk assessment. Such tests shall be conducted or reviewed by independent third parties or staff independent of those who develop or maintain the information security program.

(3) The Board shall continue to adhere to the written program to oversee and manage risks associated with outsourcing technology services to third party servicers, including

technology service providers and vendors, adopted pursuant to the September 10, 2008 Formal Agreement. This third party management program shall be consistent with OCC Bulletin 2001-47, “Third Party Relationships,” dated November 1, 2001, and OCC Advisory Letter 2000-12, “Risk Management of Outsourcing Technology Services” dated November 28, 2000.

(4) The Board shall continue to adhere to the enterprise-wide business continuity process at the Bank, adopted pursuant to the September 10, 2008 Formal Agreement, that complies with the requirements set forth in the “Business Continuity Planning” booklet of the FFIEC Information Technology Examination Handbook. At a minimum, the business continuity process shall include:

- (a) a business impact analysis that includes:
 - (i) the identification of the potential impact of uncontrolled, non-specific events on the institution’s business processes and its customers; and
 - (ii) an estimation of the maximum allowable downtime and acceptable levels of data, operations, and financial losses.
- (b) a risk assessment process that includes:
 - (i) the prioritization of potential business disruptions based upon severity and likelihood of occurrence;
 - (ii) a gap analysis comparing the institution’s existing business resumption plans, if any, to what is necessary to achieve recovery time and point objectives; and

- (iii) an analysis of threats based upon the impact on the institution, its customers, and the financial markets, not just the nature of the threat.
 - (c) a risk management process that includes the development of a written, enterprise-wide business continuity plan (BCP) at the Bank; and
 - (d) a risk monitoring process that includes:
 - (i) testing of the BCP on at least an annual basis;
 - (ii) independent audit and review of the BCP; and
 - (iii) updating the BCP based upon changes to personnel and the internal and external environments.
- (5) The Board shall provide a quarterly written progress report on each of the requirements of this Article to the Assistant Deputy Comptroller.

Article XII

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 conducted as of December 31, 2007, in any subsequent Report of Examination, by any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination. The quarterly progress reports required by Article II of this Agreement shall include the date and manner in which each correction has been affected during that reporting period.

(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 Report of Examination conducted as of December 31, 2007, in any subsequent Report of Examination, by any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination, 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) Upon adoption, a copy of these procedures shall be promptly forwarded to the Assistant Deputy Comptroller.

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 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 noncompliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any noncompliance 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.

