

95284

Interview
Basket # 0546

AGREEMENT

This Agreement ("Agreement") is made and is effective this 15th day of December, 1989, by and between Midwest Federal Savings Bank, Minot, North Dakota, OTS No. 0546 ("Institution") and the Office of Thrift Supervision ("OTS"). This Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Institution. It is understood and agreed that this Agreement is a "written agreement" entered into with the OTS within the meaning of 12 U.S.C. §§ 1818 (b) and (i), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. Law No. 101-73, 100 Stat. 183 (1989) ("FIRREA").

WHEREAS, the board of directors of the Institution recognizes that, as a result of the acquisition of First Federal Savings and Loan Association of Grand Forks in March 1984 ("Acquisition") and the approximately \$89 million in goodwill that the Institution was permitted to recognize in connection with the Acquisition, the Institution has had negative tangible capital since the Acquisition and further recognizes that the Institution currently is GAAP insolvent and is not meeting its current regulatory capital requirement;

WHEREAS, the board of directors acknowledges that, as a result of the enactment of the FIRREA, effective December 7, 1989, the Institution will be required to have minimum tangible capital of 1.5% of total assets and that approximately \$65 million of its \$89 million in goodwill from the Acquisition will be excluded immediately from regulatory capital, such that the Institution will not meet its capital requirements under FIRREA;

WHEREAS, the OTS has indicated that negative tangible capital constitutes "substantially insufficient capital" within the meaning of Section 5(d)(2)(A)(iii) of the Home Owners' Loan Act, as amended by FIRREA, ("HOLA") and thereby constitutes grounds for the appointment of a conservator or receiver for the Institution by the OTS;

WHEREAS, the Institution's board of directors acknowledges the interest, rights, powers, and authority of the OTS with respect to the Institution under the statutes and regulations that govern the operations of the Institution; and

WHEREAS, the OTS is of the opinion that the Institution has not complied with 12 C.F.R. § 563.13, thereby providing grounds for the initiation of cease and desist proceedings against the Institution by the OTS; and

WHEREAS, in the interest of regulatory compliance and cooperation, the Institution, without admitting or denying any regulatory violations or unsafe or unsound practices, is willing

to enter into this Agreement to avoid the initiation of such cease and desist proceedings; and

WHEREAS, the OTS is willing to forbear at this time from the initiation of cease and desist proceedings as the result of the Institution's failure to comply with 12 C.F.R. § 563.13, as long as the Institution is in compliance with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the above-stated forbearance, it is agreed between the parties hereto as follows:

Merger and Reorganization

1. The OTS is authorized hereby to negotiate a plan of merger, consolidation, transfer of the Institution's assets and liabilities, reorganization, or acquisition of, or capital infusion for the Institution ("plan of combination or reorganization") and/or Management Services Agreement; and to draft proposed documents for any such plan of combination or reorganization and/or Management Services Agreement.
2. The board of directors shall take under consideration any Management Services Agreement and/or plan of combination or reorganization that is forwarded and recommended to the board of directors by OTS within a week of receiving that recommendation and shall promptly approve any such Management Services Agreement and/or plan of combination or reorganization under which the interests of the depositors, other creditors, and borrowers of the Institution are protected.
3. The board of directors shall recommend to the members of the Institution any Management Services Agreement and/or plan of combination or reorganization approved by the board of directors pursuant to paragraph 2 of this Agreement if approval by the members or a portion thereof is necessary to effect such plan.
4. The Institution, at the direction of the OTS, shall take all corporate actions necessary to effect a plan of combination or reorganization approved by the OTS and/or, at the direction of the OTS, shall provide for the management of its day-to-day operations in accordance with a Management Services Agreement approved by the OTS; and OTS may execute on behalf of the Institution, any necessary documents effecting such Management Services Agreement and/or plan of combination or reorganization.
5. The Institution by this Agreement consents to the appointment of a conservator or receiver or other legal custodian for the Institution by the Director of OTS. This consent is given based on the negative tangible capital of the Institution.

6. Upon the execution of appropriate confidentiality agreements, the books and records of the Institution and of any subsidiary of the Institution, upon the request of OTS, shall be made available to the representatives of any institution, person, or entity negotiating with the OTS concerning a Management Services Agreement and/or a plan of combination or reorganization.

Uninsured Deposits

7. The Institution shall use reasonable efforts to discourage the acceptance or renewal of any uninsured deposit, except for collateralized deposits that do not exceed \$20 million in the aggregate and that are collateralized on a market value basis for no more than 110% of the amount of the deposits or unless the acceptance of uninsured deposits is approved in writing by the OTS.

Directorate and Management

8. The directors of the Institution hereby resolve and agree to resign from the board at the request of OTS, at such time and in such order as OTS shall request. In accordance with the Institution's bylaws, each director requested to resign shall submit his resignation to the Secretary or Acting Secretary of the Institution.
9. The directors of the Institution agree to terminate the employment, reassign the duties, or reduce the salary of any officer or employee at the request of OTS, to the extent permitted by applicable law. In the case of any such terminations, the directors may establish reasonable severance pay for the officer or employee terminated subject to OTS approval.
10. The directors of the Institution who are directors of a subsidiary of the Institution hereby resolve and agree to resign from the board and any officer position of any such subsidiary at the request of an OTS, at such time and in such order as the OTS shall request.
11. The board of directors of the Institution and each director of the Institution resolves and agrees to fill any vacancy in the directorate of the Institution by electing, in accordance with the Institution's bylaws, a person recommended by the OTS. If such recommendation is made by OTS at a duly constituted board meeting, it shall be acted on immediately. If such OTS recommendation is made other than at a duly constituted board meeting, it shall be acted on within one week of receipt of the recommendation.

12. The board of directors shall take any steps necessary to amend the bylaws of the Institution, in accordance with such bylaws, to provide for such number of directors as OTS shall recommend or to effect the election of any person to the board who is recommended by OTS.

Operating Restrictions

13. For the purposes of this paragraph 14, the following definitions shall apply: a "set" is a group of loans, participation, investments, securities, or other assets related by being sold or pledge to purchased from, or exchanged with single persons, entities, or institutions acting together in a single transaction; "invest in" means to make, purchase, acquire, guarantee, refinance, modify, or to commit to do any of these; "transfer" means to sell, pledge, exchange, or to commit to do any of these; "real estate investment" means the gross book value of real estate purchased, acquired, or owned in any manner, including capital improvement expenditures, where gross book value equals book value before adjustment for any loss reserves or allowances; a "home" is any single family dwelling unit(s) for four or fewer families in the aggregate; and "capital improvement expenditures" does not include ordinary repair and maintenance or other improvements that do not exceed \$15,000 in the aggregate for any one parcel of property or accrued interest expenses.

Notwithstanding any of the restrictions contained in this paragraph, Midwest Dakota Finance Corp. and Midwest Dakota Finance Corp. II, the finance subsidiaries of the Institution, shall have the authority, without OTS approval, to invest their cash flows in the following:

- a. FHLMC Certificates
- b. FNMA Certificates
- c. GNMA Certificates
- d. Collateralized mortgage obligations - These securities may not be classified as high risk under OTS Thrift Bulletin 12. The security must have an AAA Rating by both Moody's and Standard and Poor's, if it is not a FNMA or FHLMC issue. The security must be part of an issue which was initially offered to the public as part of an offering at least equal to \$100,000,000. The investment will be limited to \$5,000,000 per issue. The maximum average life will be five years or less if a fixed rate

tranche and 10 years or less if a floating rate tranche.

- e. U.S. Treasury Securities
- f. Short term money market instruments
 - (1) Commercial paper limited to the two highest ratings based on Standard and Poor's, Moody's and Finch's ratings. The issuer must rank among the top 25 issuers in terms of dollars issued outstanding.
 - (2) Repurchase obligations with respect to any U.S. Treasury, GNMA, FNMA or FHLMC security entered into with a depository institution, trust company or securities dealer whose commercial paper has one of the top two ratings and whose long term unsecured debt obligations has a credit rating from Moody's of at least Aa3.
- g. Other securities may be invested in from time to time with the prior written approval of the OTS.
- h. When purchasing or selling GNMA, FNMA and FHLMC securities, forward commitments extending no further than the next month's Public Securities Administration settlement dates may be employed.

Except for legally binding commitments existing as of the date of this Agreement, without prior written approval of the OTS, the Institution shall not, and shall not any allow subsidiary of the Institution to:

- a. engage in forward commitments, futures transactions, or financial options transactions as defined in 12 C.F.R. §§ 563.17-3, 563.17-4, 563.17-5;
- b. invest in any loans or contracts secured by real estate or participations therein (including any acquisition, construction and development loans) or any set of such loans or participations, except loans secured by property located within North Dakota or other communities as delineated by the Institution's Community Reinvestment Act Statement as of May 17, 1989 ("CRA Statement"), which:
 - (1) finance the bona fide purchase of owner-occupied homes secured by first liens on such homes and do not exceed \$350,000,
 - (2) refinance loans on existing owner-occupied homes

- secured by first liens on such homes and do not exceed \$350,000,
- (3) are secured by second liens on existing owner-occupied homes and do not exceed \$50,000,
 - (4) are secured by residential real estate, other than a home, and do not exceed the lesser of \$750,000 or the limitations contained in Section 5(u) of the HOLA, as amended by FIRREA, or
 - (5) are secured by nonresidential real estate and do not exceed the lesser of \$500,000, or the limitations contained in Section 5(u) of the HOLA, as amended by the FIRREA;
- c. notwithstanding subparagraph (b), purchase any loans, except for loans to facilitate the sale of real estate owned by the Institution, which do not exceed \$100,000 and are secured by one-to-four family residential real estate;
 - d. make any real estate investment or set of such investments, other than real estate acquired by foreclosure or deed in lieu of foreclosure, unless such investment or set of investments is made in compliance with 12 C.F.R. § 563.9-8 (1989) and does not exceed \$1,000,000;
 - e. transfer any real estate investment or set of such investments, in an amount in excess of \$500,000;
 - f. pay or incur any capital improvement expenditures in connection with holding or improving of any real estate investment, other than for real estate acquired by foreclosure or deed in lieu of foreclosure up to \$15,000 in the aggregate per each parcel of property, unless such expenditure is in compliance with 12 C.F.R. § 563.9-8;
 - g. invest in any security or any set of securities, except as otherwise provided in this Agreement, unless such investment qualifies as a liquid asset under Section 6 of the HOLA, as amended by the FIRREA;
 - h. invest in or transfer commercial loans or letters of credit, whether secured or unsecured with a book value in excess of the lesser of \$300,000 or the limitations contained in Section 5(u) of HOLA, as amended by FIRREA, except that such loans or letters of credit may be made

to borrowers located in North Dakota for agricultural purposes or to small businesses (in transactions guaranteed by the federal Small Business Administration or any similar state entity) up to the limitations contained in Section 5(u) of HOLA, as amended by FIRREA, and OTS Regulation 563.93;

- i. invest in the savings accounts of any financial institution, unless such accounts are fully insured by the Federal Deposit Insurance Corporation ("FDIC") and have a term to maturity of less than one year;
- j. invest in or transfer any consumer, education, or home improvement loans or set of such loans, except for loans made to borrowers residing within the Institution's local community or communities as delineated by the Institution's CRA Statement, that do not exceed \$50,000;
- k. invest in, extend credit to or guarantee the debt of any service corporation or any subsidiaries thereof exclusive of investments or extensions of credit to Midwest Funding Inc., for purposes of facilitating the work-out of EPIC mortgages up to \$100,000 per property;
- l. invest in any other asset or set of other assets in excess of \$30,000, except in the usual and ordinary course of business;
- m. transfer any loan secured by real estate or participation therein, any security or other asset; or any set of such loans, participations, securities, or other assets; except to securitize loans through any federal government agency or as otherwise provided in this Agreement;
- n. borrow any money, other than from a Federal Home Loan Bank;
- o. enter into any lease for real estate if either the gross annual payments under the terms of such lease would exceed 1/50 of 1% of the assets of the Institution or the term of the lease exceeds one year;
- p. encumber any of its property or other assets except as security for advances from a Federal Home Loan Bank or as otherwise provided in this Agreement,
- q. enter into any contract or any agreement for the purchase, sale, or lease of goods, materials, equipment, supplies, services or capital assets in excess of \$30,000, except a loan servicing contract to service the

Dartmouth loans or any contracts in the ordinary and usual course of its business;

- r. knowingly incur any obligation, liability or contingent liability in excess of \$30,000, except in the ordinary and usual course of its business;
- s. enter into any joint venture agreements;
- t. except for individual merit increases in accordance with its standard personnel policy adopted prior to the effective date of this Agreement and normal periodic employee salary and wage increases scheduled prior to the effective date of this Agreement and that comply with 12 C.F.R. § 563.17 (1989), make any increase in or agree to increase the rate of compensation to any of its directors, officers or employees; however, the compensation of non-officer employees may be increased if the compensation of such employee before any increase does not exceed \$40,000 and the aggregate increases for all those eligible employees do not exceed the greater of the increase in the cost of living or 5% during any calendar year;
- u. employ or appoint any person to serve as an officer, director, or senior manager who is not so employed or appointed as of the effective date of this Agreement; employ any person at a rate of compensation which, on an annualized basis, exceeds \$50,000 per year, except for individuals already employed at that rate of compensation, including cost of living increases each year; employ any person pursuant to an agreement that is not terminable at the will of the Institution and that otherwise does not comply with 12 C.F.R. § 563.39, or enter into or amend or renew any collective bargaining agreements, pension or profit sharing, bonus, severance pay, retirement, fringe benefit, or other employee benefit plans, or other employment contracts with any employee, director or officer;
- v. enter into, renew or revise any contractual arrangement with any officer, director, controlling person, consultant performing management services, affiliate, subsidiary or affiliated person for or of the Institution or any of its subsidiaries;
- w. amend or permit to be amended its charter or bylaws except as directed by OTS;

- x. make any material change in accounting method unless required under generally accepted accounting principles or any OTS guideline or regulation;
- y. enter into any purchase or repurchase agreement obligation arising from a transfer of government securities, except as may otherwise be permitted by this Agreement;
- z. enter into any agreement to merge, consolidate, or otherwise be acquired, to reorganize, or for management services, except in connection with a plan of combination or reorganization or a Management Services Agreement recommended by the OTS;
- aa. enter into any other transaction in excess of \$30,000, unless in the ordinary and usual course of business;
- bb. reduce the amount of any specific or general reserve established pursuant to the provisions of 12 C.F.R. § 561.16c, unless the related asset is paid in full or sold or transferred without financing by the Institution.

Growth

14. Except with the specific written approval of OTS, the Institution shall not increase its liabilities during any calendar quarter in an amount exceeding the amount of interest expensed on savings accounts during such quarter (or, in the case of share accounts, earnings credited) plus the amount necessary to fund during the quarter any loans-in-process obligations or legally binding commitments existing as of October 31, 1989. In calculating interest credited during any one quarter, the Institution may include interest credited during a previous quarter, for which there was no growth during the previous quarter.

Within 30 days after the execution of the Agreement, the Institution shall provide to the Agent a list of all loans-in-process obligations and legally binding commitments that exist as of October 31, 1989, and provide a schedule of the monthly estimated disbursements for outstanding commitments and loans-in-process obligations.

The list of commitments shall include:

- a. the type of commitment;
- b. the date of commitment;
- c. the total amount;
- d. the identity of the borrower;

- e. the identity of the seller, if applicable;
- f. the effective date;
- g. the date of anticipated funding.

Upon the request of OTS, the Institution shall submit a written opinion from legal counsel that the terms of any commitment specified by OTS in excess of \$250,000 constitutes a legally binding obligation of the Institution that could be enforced in a court of law by the party to whom the commitment is made.

Reports

- 15. The Institution shall file all financial reports required by the OTS, including monthly and quarterly reports on the required date.

Mortgage Derivatives

- 16. The Institution is prohibited from investing in high risk mortgage derivative products and mortgage swaps. For the purpose of this subparagraph, the term "high risk mortgage derivative products and mortgage swaps" shall have the meaning as set out in OTS Thrift Bulletin 12 and its Appendices or any successor bulletin.

Specific Reserves

- 17. The Institution shall make adjustments to the book value of any asset in accordance with 12 C.F.R. §§ 561.16c, 571.1a.

Data Processing

- 18. The OTS shall have the authority to waive any notice that is required by contract to be given to the Institution by any provider of data processing services in connection with a request for information contained in the computer files made by OTS or the FDIC.

Attendance at Conventions, Conferences, or Seminars

- 19. Officers and directors of the Institution shall not attend conventions, conferences, or seminars at the expense of the Institution without the prior written approval of the Agent.

Undefined Words of Terms

- 20. All technical words or terms used in this Agreement, for which meanings are not specified or otherwise provided by the provisions of this Agreement, shall, insofar as applicable,

have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, and any such technical words or terms used in this Agreement and undefined in said Code of Federal Regulations shall have meanings that accord with the best custom and usage in the savings and loan industry.

References to "OTS" other than in paragraph 5, shall mean the District Director or a Supervisory Agent of OTS at its Des Moines District Office, or their respective successors.

Legal Effects

21. The terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

Termination

22. This Agreement shall remain in effect until terminated or modified or suspended by the OTS. OTS may suspend any or all provisions of this Agreement during the term of a Management Services Agreement executed pursuant to this Agreement. The existing directive to the Institution from OTS regarding mortgage derivatives is superseded by this Agreement.

Outside Directors

23. The parties hereto recognize that this Agreement imposes various obligations on the Institution and, in some instances, directly upon the board of directors of the Institution. It is agreed hereby that with respect to the obligations imposed by this Agreement solely upon the Institution, the outside director(s) shall not be deemed to have directly or indirectly, violated those obligations, or caused the violation of those obligations, unless the outside director(s) failed to act reasonably or failed to make reasonable, good faith efforts to cause the Institution to comply with the obligations placed upon it by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement individually or by their duly designated agent.

OFFICE OF THRIFT SUPERVISION

By: 151
its: Supervisory Agent
Eighth District

MIDWEST FEDERAL SAVINGS BANK
MINOT, NORTH DAKOTA

By its Directors:

151
Director

Director

151
Director

CERTIFIED COPY OF
RESOLUTION OF
BOARD OF DIRECTORS

I, the undersigned, being the duly qualified Secretary of Midwest Federal Savings Bank, Minot, North Dakota, OTS No. 0546 ("Institution"), hereby certify that the following is a true copy of a resolution duly adopted by its board of directors at a meeting duly called and held on December 15, 19,89, that at said meeting a quorum was present and voting throughout, and that said resolution has not been rescinded or modified and is now in full force and effect:

RESOLUTION

WHEREAS, the board of directors of the Institution recognizes that, as a result of the acquisition of First Federal Savings and Loan Association of Grand Forks in March 1984 ("Acquisition") and the approximately \$89 million in goodwill that the Institution was permitted to recognize in connection with the Acquisition, the Institution currently has had negative tangible capital since the Acquisition, and further recognizes, that the Institution currently is and GAAP insolvent and is not meeting its current regulatory capital requirement;

WHEREAS, the board of directors acknowledges that, as a result of the enactment of the FIRREA, effective December 7, 1989, the Institution will be required to have minimum tangible capital of 1.5% of total assets and that approximately \$65 million of its \$89 million in goodwill from the Acquisition will be excluded immediately from regulatory capital, such that the Institution will not meet its capital requirements under FIRREA;

WHEREAS, the OTS has indicated that negative tangible capital constitutes "substantially insufficient capital" within the meaning of Section 5(d)(2)(A)(iii) of the Home Owners' Loan Act, as amended by FIRREA, ("HOLA") and thereby constitutes grounds for the appointment of a conservator or receiver for the Institution by the OTS;

WHEREAS, the Institution's board of directors acknowledges the interest, rights, powers, and authority of the OTS with respect to the Institution under the statutes and regulations that govern the operations of the Institution; and

WHEREAS, the OTS is of the opinion that the Institution has not complied with 12 C.F.R. § 563.13, thereby providing grounds for the initiation of cease and desist proceedings against the Institution by the OTS; and

WHEREAS, in the interest of regulatory compliance and cooperation, the Institution, without admitting or denying any regulatory violations or unsafe or unsound practices, is willing

to enter into this Agreement to avoid the initiation of such cease and desist proceedings; and

WHEREAS, the OTS is willing to forbear at this time from the initiation of cease and desist proceedings as the result of the Institution's failure to comply with 12 C.F.R. § 563.13, as long as the Institution is in compliance with the provisions of this Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the proposed Agreement, a copy of which is attached hereto, be and is hereby approved by the board of directors of Institution and all of its terms whether absolute or contingent are hereby adopted by resolutions of said board. The officers and employees of Institution are directed and authorized to take all necessary steps to implement immediately the terms of the Agreement.

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of Institution this 15th day of December, 19 89.

15/
Secretary