

AGREEMENT BY AND BETWEEN  
National Union Bank of Kinderhook  
Kinderhook, New York  
and  
The Office of the Comptroller of the Currency

National Union Bank of Kinderhook, Kinderhook, New York (“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, through his National Bank Examiner, has examined the Bank, and his findings are contained in the Letter to the Board of Directors (“Board”) dated July 24, 2003 (“Comptroller Letter”).

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board, and the Comptroller, through his authorized representative, that, effective October 9, 2003, 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  
New York Metro Field Office  
830 Morris Turnpike  
Short Hills, New Jersey 07078

## ARTICLE II

### COMPLIANCE COMMITTEE AND ACTION PLAN

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least four (4) directors, of which no more than one shall be an employee 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 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 monthly.

(3) Within thirty (30) days of the appointment of the Committee and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

(a) actions taken to comply with each Article of this Agreement; and

(b) the results of those actions.

(4) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written action plan detailing the Board's assessment of what needs to be done to improve the Bank, specifying how the Board will implement the plan, and setting forth a timetable for the implementation of the plan. This written action plan shall incorporate the policies, plans and actions required by the remaining articles of this Agreement and also shall address the overall internal controls, financial condition and operating results of the Bank. This plan also shall delineate specific actions to improve overall credit risk management which encompasses credit risk identification, staffing of the credit department, the flow of information to senior management and to the Board, collateral documentation, commercial loan underwriting and problem loan collection plans.

(5) The Board shall forward a copy of the Compliance Committee's reports, with any additional comments by the Board, and the Board's written action plan to the Assistant Deputy Comptroller.

### ARTICLE III

#### NEW SENIOR LENDING OFFICER

(1) Within thirty (30) days, the Board shall identify and submit for supervisory review a new, capable Senior Lending Officer who shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and ensure the safe and sound operation of the Bank.

(2) Prior to the appointment of any individual to the Senior Lender position, the Board shall submit to the Assistant Deputy Comptroller the following information:

- (a) the information sought in the “Changes in Directors and Senior Executive Officers” booklet of the Comptroller’s Corporate Manual, together with a legible fingerprint card for the proposed individual;
- (b) a written statement of the Board's reasons for selecting the proposed officer; and
- (c) a written description of the proposed officer's duties and responsibilities.

(3) The Assistant Deputy Comptroller shall have the power to disapprove the appointment of the proposed Senior Lending Officer. However, the lack of disapproval of such person shall not constitute an approval or endorsement of the individual by the Comptroller.

(4) The requirement to submit information and the prior disapproval provisions of this Article are based on the authority of 12 U.S.C. § 1818(b) and do not require the Comptroller or the Assistant Deputy Comptroller to complete his review and act on any such information or authority within ninety (90) days.

#### ARTICLE IV

#### LENDING POLICY

(1) Within ninety (90) days, the Board shall review and revise the Bank's written loan policy. In revising this policy, the Board shall utilize as guidance the Loan Portfolio Management booklet, A-LPM, of the Comptroller’s Handbook. This revised policy shall include, but not necessarily be limited to, the following:

- (a) a description of each type of loan the Bank may originate or purchase;
- (b) a prohibition against requesting or requiring borrowers or potential borrowers to sign notes in blank for later use;

- (c) a requirement that current and satisfactory credit information be obtained on each borrower, including appropriate credit information on guarantors and partners of the borrower involved in the loan or collateral, and a search of public records for tax liens, judgments or other public information that impacts the creditworthiness of the borrower;
- (d) a maturity schedule for each type of loan authorized, based on the anticipated source of repayment, the purpose of the loan, and the useful life of the collateral;
- (e) maximum ratios of loan value to the appraised value or acquisition costs of collateral securing the loan;
- (f) collection procedures that include follow-up efforts, which are systematically and progressively stronger and comply with Article IX of this Agreement;
- (g) a pricing policy that takes into consideration costs, general overhead, and probable loan losses, while providing for a reasonable margin of profit;
- (h) a limitation on aggregate outstanding loans in relation to other balance sheet accounts;
- (i) distribution of loans by category;
- (j) guidelines for loans to insiders, including a statement that such loans will not be granted on terms more favorable than those offered to similar outside borrowers;
- (k) guidelines and limitations on concentrations of credit;

- (l) guidelines and limitations on the approval of overdrafts and the practice of debiting customers' accounts when the debit creates or increases an existing overdrawn position;
- (m) a limitation on the type and size of loans that may be made by loan officers without prior approval by the Board or a committee established by the Board for this purpose;
- (n) measures to correct the deficiencies in the Bank's lending procedures noted in any ROE;
- (o) guidelines designed to improve Board oversight of the loan approval process. At a minimum, the policy shall:
  - (i) establish dollar limits on individual extensions of credit to any one borrower, above which the prior approval of the Board, or a committee thereof, would be required;
  - (ii) establish dollar limits on aggregate extensions of credit to any one borrower, above which any new extensions of credit to that borrower, regardless of amount, would require the prior approval of the Board, or a committee thereof;
  - (iii) establish reporting requirements and approval criteria for overdrafts; and
  - (iv) require that all credits that deviate from the Bank's normal course of business, including all types of credits not authorized under the policy, receive the prior approval of the Board, or a committee thereof.

- (p) guidelines consistent with Banking Circular 255, setting forth the criteria under which renewals of extensions of credit may be approved. At a minimum the policy shall:
  - (i) ensure that renewals are accurately reflected as renewals and not as new notes and that renewals are not made for the sole purpose of reducing the volume of loan delinquencies; and
  - (ii) provide guidelines and limitations on the capitalization of interest and the renewal of loans without the payment of interest or a reduction in principal and the renewal of loans when new funds are the advanced;
- (q) charge-off guidelines, by type of loan or other asset, including Other Real Estate Owned, addressing the circumstances under which a charge-off would be appropriate and ensuring the recognition of losses within the quarter of discovery; and
- (r) guidelines for periodic review of the Bank's adherence to the revised lending policy.

(2) Upon adoption, the policy shall be implemented and a copy of the policy shall be forwarded to the Assistant Deputy Comptroller for review.

(3) The Board shall ensure that the Bank adheres to the policy and has processes, personnel, and control systems adequate for the Bank to implement and adhere to the policy.

## ARTICLE V

### LOAN PORTFOLIO MANAGEMENT

(1) The Board, within ninety (90) days, shall develop, implement, and thereafter ensure Bank adherence to a written program to improve the Bank's loan portfolio management.

The program shall include, but not be limited to:

- (a) procedures to ensure satisfactory and perfected collateral documentation;
- (b) procedures to ensure that extensions of credit are granted, by renewal or otherwise, to any borrower only after obtaining and analyzing current and satisfactory credit information, including the receipt of appropriate credit information on guarantors and partners of the borrower involved in the loan or collateral;
- (c) procedures to ensure compliance with loan approval authorities and procedures in the Lending Policy adopted under Article IV;
- (d) a system to track and analyze exceptions to the Lending Policy;
- (e) procedures to ensure conformance with Call Report instructions;
- (f) prudent growth targets to ensure that the quality of the loan portfolio is not compromised and that growth is commensurate with the Bank's capital position and its expertise in the lending area;
- (g) a performance appraisal process, including performance appraisals, job descriptions, and incentive programs for loan officers, which adequately considers their performance relative to Lending Policy compliance and other loan administration matters, including obtaining required documentation and accurate credit grading; and



- (h) procedures to track and analyze concentrations of credit, significant economic factors, and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios.

(2) Upon completion, a copy of the program shall be forwarded to the Assistant Deputy Comptroller.

(3) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to systems that provide for effective monitoring of:

- (a) early problem loan identification to assure the timely identification and rating of loans and leases based on lending officer submissions;
- (b) statistical records that will serve as a basis for identifying sources of problem loans and leases by industry, size, collateral, division, group, indirect dealer, and individual lending officer;
- (c) previously charged-off assets and their recovery potential;
- (d) compliance with the Bank's Lending Policy and laws, rules, and regulations pertaining to the Bank's lending function;
- (e) adequacy of credit and collateral documentation; and
- (f) concentrations of credit.

(4) During October 2003, and, thereafter, on a quarterly basis, management will provide the Board with written reports including, at a minimum, the following information:

- (a) the identification, type, rating, and amount of problem loans and leases;
- (b) the identification and amount loans and leases that are over thirty (30) days delinquent;
- (c) credit and collateral documentation exceptions;

- (d) the identification and status of credit related violations of law, rule or regulation;
- (e) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (a) through (d) of this Article and Paragraph;
- (f) an analysis of concentrations of credit, significant economic factors and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios;
- (g) the identification and amount of loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (h) the identification of loans and leases not in conformance with the Bank's Lending Policy and exceptions to the Bank's Lending Policy discovered and authorized since the previous report.

(5) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program and systems developed pursuant to this Article.

## ARTICLE VI

### INDEPENDENCE OF LOAN REVIEW

Parties performing loan review for the Bank shall report directly to the Board or a designated committee thereof, who shall have the sole power to direct these loan review activities. The Board shall approve the appointment, as well as the scope of the engagement, of all outside third parties performing external loan review. All reports prepared by external loan

review shall be filed directly with the Board and the designated committee thereof, if applicable, and not through any intervening party.

## ARTICLE VII

### ALLOWANCE FOR LOAN AND LEASE LOSSES

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

- (a) the guidance and requirements of FASB 114;
- (b) results of the Bank's internal loan review;
- (c) results of the Bank's external loan review;
- (d) an estimate of inherent loss exposure on each significant credit;
- (e) an estimate of inherent loss exposure on each credit in excess of fifty thousand dollars (\$50,000) based on an analysis of pools of loans for all types of loans except commercial time and demand notes outstanding as of the effective date of this Agreement, which shall be reviewed individually for estimates of inherent loss;
- (f) loan loss experience;
- (g) trends of delinquent and nonaccrual loans;
- (h) concentrations of credit in the Bank;
- (i) present and prospective economic conditions; and

(j) support for specific allocations.

(2) The program shall provide for a review of the Allowance by the Board at least once each calendar quarter. Any deficiency in the Allowance discovered by the Board shall be remedied in the quarter it is discovered, prior to the filing of the Consolidated Reports of Condition and Income, by additional provisions from earnings. Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the Allowance.

(3) A copy of the Board's program shall be submitted to the Assistant Deputy Comptroller for review and prior determination of no supervisory objection.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

## ARTICLE VIII

### CRITICIZED ASSETS

(1) The Bank shall take immediate and continuing action to protect its interest in those assets criticized in the Comptroller's Letter, any Report of Examination, by internal or external loan review, or in any list provided to the President of the Bank by the National Bank Examiners during any examination, which references this provision.

(2) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written program designed to eliminate the basis of criticism of assets criticized in the Comptroller's Letter, any Report of Examination, or by any internal or external loan review, or in any list provided to the President of the Bank by the National Bank Examiners

during any examination, as "doubtful," "substandard," or "special mention." This program shall include, at a minimum:

- (a) an identification of the expected sources of repayment;
- (b) the appraised value of supporting collateral and the position of the Bank's lien on such collateral where applicable;
- (c) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations, overdraft history, and a search of public information for liens, judgments or other information that impacts the creditworthiness of the borrower; and
- (d) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment.

(3) Upon adoption, a copy of the program for all criticized assets equal to or exceeding fifty thousand dollars (\$50,000) shall be forwarded to the Assistant Deputy Comptroller.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

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

- (a) the status of each criticized asset or criticized portion thereof that equals or exceeds fifty thousand dollars (\$50,000);
- (b) management's adherence to the program adopted pursuant to this Article;
- (c) the status and effectiveness of the written program; and

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

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

(7) Subsequent to the effective date of this Agreement, the Bank may extend credit, directly or indirectly, including renewals, extensions or capitalization of accrued interest, to a borrower with one or more loans or other extensions of credit that are criticized as described in Paragraph 1 of this Article and with aggregate loans or other extensions from the Bank exceeding fifty thousand dollars (\$50,000), only if each of the following conditions is met:

(a) the Board or designated committee finds that the extension of additional credit is necessary to promote the best interests of the Bank and that prior to renewing, extending or capitalizing any additional credit, a majority of the full Board (or designated committee) approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank; and

(b) a comparison to the written program adopted pursuant to this Article shows that the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

(8) An additional extension of credit may be deemed to promote the best interests of the Bank if it protects the Bank's interest in the collateral, enhances or preserves the Bank's chances for collection, protects the Bank against further loss or provides financial or other assistance to the Bank.

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

## ARTICLE IX

### COLLECTION PROCEDURES

(1) Within sixty (60) days, the Bank shall develop, implement and thereafter adhere to a written program designed to improve and strengthen collection efforts. The program shall include specific plans to:

- (a) reduce delinquent loans; and
- (b) improve recovery of charged-off assets.

(2) Upon completion, that Board shall submit a copy of the program to the Assistant Deputy Comptroller for review.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

## ARTICLE X

### CREDIT AND COLLATERAL EXCEPTIONS

(1) Within sixty (60) days the Board shall ensure the Bank has requested and taken reasonable action to obtain current and satisfactory credit information on all loans lacking such information, and on any other loans listed in any Report of Examination, in any internal or external loan review, or in any listings of loans lacking satisfactory credit information provided to the President of the Bank at the conclusion of an examination.

(2) Within sixty (60) days the Board shall ensure the Bank has taken reasonable action to obtain proper collateral documentation on all loans and correct each collateral

exception listed in any Report of Examination, in any internal or external loan review, or in any listings of loans lacking proper collateral documentation provided to the President of the Bank by the National Bank Examiners at the conclusion of an examination.

(3) Subsequent to the effective date of the Agreement, the Bank may grant, extend, renew, alter or restructure any loan or other extension of credit only after:

- (a) documenting the specific reason or purpose for the action;
- (b) identifying the expected source of repayment in writing;
- (c) structuring the repayment terms to coincide with the expected source of repayment;
- (d) obtaining and analyzing current and satisfactory credit information, including cash flow analysis for loans that are to be repaid from operations;
  - (i) Failure to obtain the information in (3)(d) shall require a majority of the full Board (or a delegated committee thereof) to certify in writing the specific reasons why obtaining and analyzing the information in (3)(d) would be detrimental to the best interests of the Bank.
  - (ii) A copy of the Board certification shall be maintained in the credit file of the affected borrower(s). The certification will be reviewed in subsequent examinations of the Bank; and
- (e) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable.



## ARTICLE XI

### MANAGEMENT INFORMATION SYSTEMS FOR THE LOAN PORTFOLIO

(1) The Board shall develop, implement, and thereafter ensure Bank adherence to a written program establishing an effective management information system (MIS) that facilitates risk identification, establishes controls, and delivers accurate information for timely review of the loan portfolio by senior management and the Board. In so doing, the Board shall identify the Bank's specific information requirements and establish effective reporting mechanisms to guide decisions. The program shall include procedures for:

- (a) establishing and maintaining a central liability ledger or record system that enables the Bank to aggregate, control, and track customer direct, indirect, or contingent indebtedness across all lending product lines;
- (b) expediting the timely delivery and accuracy of current information to senior management and the Board, or any designated committee of the Board;
- (c) establishing controls and procedures to ensure the accuracy of information, including balancing and reconciliation of notes to the general ledger;
- (d) ensuring that data is processed and compiled uniformly to facilitate meaningful trend analysis and provide for future systems changes;
- (e) producing complete and relevant information in a summarized form, for Board and management reports, to permit effective decision making;

- (f) identifying, recording, and tracking missing, incomplete, or imperfect loan and collateral documentation, including lacking or outdated appraisals and operating statements on real estate projects;
- (g) generating periodic reports, on at least a monthly basis, which identify emerging problem loans (utilizing factors or analysis set forth in this program), identified problem loans, Other Real Estate Owned (OREO), and foreclosed assets;
- (h) maintaining a system by which the Board, or a delegated committee of the Board, can identify at the time of extension of credit, the aggregate customer liability relationship of that customer with the Bank;
- (i) maintaining systems and reports which identify and analyze real estate portfolio concentrations, including commitments, by type, collateral and location;
- (j) maintaining a system to calculate each concentration as a percentage of total capital;
- (k) maintaining systems and reports identifying each real estate loan or project that evidences one or more of the following characteristics: slower than anticipated sales, lease or rental activity; slower than anticipated construction progress; cost overruns; other impediments to orderly project completion; or inadequate reserves to pay interest and/or tenant improvements until project stabilization; and
- (l) producing the information that is listed in the Comptroller's Letter, as necessary to effectively supervise the loan portfolio.

(2) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

(3) As a part of the Board's ongoing responsibility to ensure that the Bank has an effective MIS, the Board shall designate a senior officer to coordinate the execution of this MIS program.

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

## ARTICLE XII

### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by March 31, 2004, or such later date as provided in the capital program approved by the Assistant Deputy Comptroller in Paragraph 4 of this Article, and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

(a) Tier 1 capital at least equal to twelve percent (12%) of risk-weighted assets;

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

(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 (3) 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, including problem loans, liabilities, earnings, fixed assets, staffing needs, and off-balance sheet activities;
- (c) an analysis of asset quality, including present and future loss potential, and the impact on future capital needs;
- (d) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
- (e) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
- (f) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and
- (g) a dividend policy that permits the declaration of a dividend only:
  - (i) when the Bank is in compliance with its approved capital program;
  - and
  - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60.

(4) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall implement and adhere to the capital program. The Board shall review and update the Bank's capital program on an annual basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted to the Assistant Deputy Comptroller.

(5) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

### ARTICLE XIII

#### INTERNAL AUDIT

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to an independent, internal audit program, with particular emphasis on the Bank's lending function, sufficient to:

- (a) detect irregularities in the Bank's operations, particularly in the lending area;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (c) evaluate the Bank's adherence to established policies and procedures, with particular emphasis directed to the Bank's adherence to its loan policies concerning underwriting standards and problem loan identification and classification;
- (d) ensure adequate audit coverage in all areas;
- (e) review the Bank's operating control procedures, practices, and accountability standards to verify they ensure the books and records of the Bank are routinely validated and reconciled to the general ledger on a monthly basis; and

(f) establish an annual audit plan using a risk based approach that is commensurate with the scope of the Bank's operations and the risk profile of the Bank.

(2) As part of this audit program, the Board shall evaluate the audit reports of any party providing services to the Bank, and shall assess the impact on the Bank of any audit deficiencies cited in such reports.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

(4) The Board shall ensure that the audit function is supported by an adequately staffed department or outside firm, with respect to both the experience level and number of the individuals employed.

(5) The Board shall ensure that the audit program is independent. The persons responsible for implementing the internal audit program described above shall report directly to the Board, that shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Board and not through any intervening party.

(6) All audit reports shall be in writing. The Board shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that auditors maintain a written record describing those actions.

(7) The audit staff shall have access to any records necessary for the proper conduct of its activities. National bank examiners shall have access to all reports and work papers of the audit staff and any other parties working on its behalf.

(8) The Bank shall submit the engagement letter that outlines the scope of the internal audit to be conducted by outside third parties to the Assistant Deputy Comptroller for review. Upon adoption, a copy of the internal audit program shall be promptly submitted to the Assistant Deputy Comptroller.

#### ARTICLE XIV

##### CAPITALIZATION OF INTEREST

(1) Within thirty (30) days, the Bank's internal auditor will prepare a schedule of all extensions of credit, excluding retail loans and residential real estate loans, on the Bank's loan trial balance as of December 31, 2002, which include capitalization of interest (as defined by OCC Examining Issuance EC-229) and the Bank's current accounting treatment for those loans. A copy of the schedule shall be submitted to the Assistant Deputy Comptroller upon its completion. The Assistant Deputy Comptroller reserves the right to expand the list upon a notation of error or incompleteness.

(2) Within thirty (30) days, the Board shall engage a new independent accounting firm to review the Bank's accounting practices for commercial extensions of credit, not secured by real estate, on the Bank's loan trial balance as of July 31, 2003, which include capitalization of interest (as defined by OCC Examining Issuance EC-229) and the Bank's current accounting treatment for those loans, as reflected in the schedule described in Paragraph 1 of this Article. The engagement letter shall be submitted for review to the Assistant Deputy Comptroller, who reserves the right to expand, narrow, or clarify the scope of the engagement. The accounting firm shall, within ninety (90) days of its engagement, or by December 31, 2003 at the latest, provide the Bank with a written opinion regarding:

- (a) the accuracy of the schedule described in Paragraph 1 of this Article;

- (b) whether charge-offs previously identified by the Bank for such extensions of credit were properly accounted for with regard to restatement of prior period financial statements or current or prospective adjustments in current or subsequent financial statements; and
- (c) identifies any additional charge-offs for such extensions of credit, including the proper accounting with regard to the restatement of prior period financial statements or current or prospective adjustments in current or subsequent financial statements.

(3) The proper accounting with regard to the restatement of prior period financial statements or current or prior adjustments must be in accordance with generally accepted accounting principles as promulgated by Accounting Principles Board Opinion No. 20, Financial Accounting Standards Board (“FASB”) Statement No. 16, FASB Concepts Statement No. 2 and Securities and Exchange Commission (“SEC”) Financial Accounting Bulletin No. 99. The Bank will make the charge-offs and accounting adjustments deemed appropriate by the accounting firm.

(4) To the extent the accounting firm informs the Bank that restated year-end financial statements are required, the Board shall ensure that all Reports of Condition previously filed with the OCC that contain material errors, within the meaning of FASB Concepts Statement No. 2 and SEC FAB 99, as determined by the accountant firm, are amended and re-filed to accurately reflect those restated year-end financial statements.

(5) A copy of the independent accountant’s opinion shall be submitted to the Assistant Deputy Comptroller upon its completion and submission to the Board.



## ARTICLE XV

### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(9) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank, or requires an extension of any timeframe within this Agreement, the Board shall submit a written request to the Assistant Deputy Comptroller asking for relief.

(10) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the Assistant Deputy Comptroller to exempt the Bank from any provision, or that require an extension of any timeframe within this Agreement. All such requests shall be accompanied by relevant supporting documentation.

(11) The Assistant Deputy Comptroller's decision in granting the request is final and not subject to further review.

## ARTICLE XVI

### CLOSING

(12) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or a prior determination of no supervisory objection, the Board has the ultimate responsibility for proper and sound management of the Bank.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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 OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of

consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its 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 OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities. Except as provided in Paragraph 4 of this Article, the terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

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

*/s/ Kristin A. Kiefer*

\_\_\_\_\_  
Kristin A. Kiefer  
Assistant Deputy Comptroller  
New York Metro Field Office

*October 9, 2003*

\_\_\_\_\_  
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.

Signed Burns F. Barford	10/9/03 Date
Signed Mary L. Barford	10/9/03 Date
Edward W. Habeck	Date
Signed Donald V. Haemmerlein	10-9-03 Date
Signed J. Peter Harvey	10/9/03 Date
Signed Brian F. Kelly	10/9/03 Date
Signed Robert A. Sherwood	10/9/03 Date
Signed M. Scott Wood, Jr.	10/9/03 Date
Signed James Monahan	10/9/03 Date
Signed Thomas Hunt	10/9/03 Date
David Ginsberg	Date

**APPENDIX A**  
National Union Bank of Kinderhook  
Kinderhook, New York

CRITICIZED ASSET REPORT AS OF: \_\_\_\_\_

BORROWER(S): \_\_\_\_\_

ASSET BALANCE(S) AND OCC RATING (SM, SUBSTANDARD, DOUBTFUL OR LOSS):

\$ \_\_\_\_\_ CRITICISM \_\_\_\_\_

AMOUNT CHARGED OFF TO DATE \_\_\_\_\_

FUTURE POTENTIAL CHARGE-OFF \_\_\_\_\_

PRESENT STATUS (Fully explain any increase in outstanding balance; include past due status, nonperforming, significant progress or deterioration, etc.):

FINANCIAL AND/OR COLLATERAL SUPPORT (include brief summary of most current financial information, appraised value of collateral and/or estimated value and date thereof, bank's lien position and amount of available equity, if any, guarantor(s) info, etc.):

PROPOSED PLAN OF ACTION TO ELIMINATE ASSET CRITICISM(S) AND TIME FRAME FOR ITS ACCOMPLISHMENT:

IDENTIFIED SOURCE OF REPAYMENT AND DEFINED REPAYMENT PROGRAM (repayment program should coincide with source of repayment):

Use this form for reporting each criticized asset that exceeds fifty thousand dollars (\$50,000) and retain the original in the credit file for review by the examiners. Submit your reports quarterly until notified otherwise, in writing, by the Assistant Deputy Comptroller.