

**#2003-22**

AGREEMENT BY AND BETWEEN  
American Investment Bank, National Association  
Salt Lake City, Utah  
and  
The Office of the Comptroller of the Currency

American Investment Bank, National Association, Salt Lake City, Utah (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 Report of Examination, dated December 31, 2001 (ROE).

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (Board), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

ARTICLE I

JURISDICTION

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Agreement shall be construed to be a “formal written agreement” within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). See 12 U.S.C. § 1831i.

(4) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. 1818(u)(1)(A).

(5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to the:

Assistant Deputy Comptroller  
Salt Lake City Field Office  
2795 Cottonwood Parkway, Suite 390  
Salt Lake City, UT 84121

## ARTICLE II

### STRATEGIC PLAN

(1) Within sixty (60) days, the Board shall adopt a written strategic plan for the Bank covering at least a three-year period. The strategic plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, reduction in the volume of non-performing assets, product line development and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives and, at a minimum, include:

- (a) an assessment of the Bank's present and future operating environment;
- (b) the development of strategic goals and objectives to be accomplished over the short and long term;
- (c) an identification of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in (1)(b) of this Article;

- (d) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under (1)(b) of this Article;
- (e) a management employment and succession program to promote the retention and continuity of capable management;
- (f) product line development and market segments that the Bank intends to promote or develop;
- (g) an action plan to improve bank earnings and accomplish identified strategic goals and objectives, including individual responsibilities, accountability and specific time frames;
- (h) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the period covered by the strategic plan;
- (i) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
- (j) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and
- (k) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(2) Upon adoption, a copy of the plan shall be forwarded to the Assistant Deputy Comptroller for review and determination of supervisory non-objection. Such determination

will be made within thirty (30) days of receipt of the strategic plan. Immediately upon receiving a determination of supervisory non-objection, the strategic plan shall be implemented.

(3) The Bank shall provide the Assistant Deputy Comptroller with at least thirty (30) days advance notice of its intent to significantly deviate from the strategic plan. A copy of the modified plan shall be submitted for review and a determination of supervisory non-objection. Such determination will be made within thirty (30) days of receipt of the strategic plan. Immediately upon receiving a determination of supervisory non-objection, the modified strategic plan shall be implemented. For purposes of this Agreement, a significant deviation shall have the same meaning as that phrase is described in OCC PPM 5400-9, Appendix B.

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

### ARTICLE III

#### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall maintain the following capital levels after applying a 200% risk weight allocation to all assets with a FICO score of 660 or below (as defined in 12 C.F.R. Part 3):

- (a) Total qualifying capital at least equal to ten percent (10%) of risk-weighted assets;
- (b) Tier 1 capital at least equal to six percent (6%) of risk-weighted assets;  
and
- (c) Tier 1 capital at least equal to five percent (5%) 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 sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a three-year capital program. The program shall include:

- (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1);
- (b) a dividend policy that permits the declaration of a dividend only:
  - (i) when the Bank is in compliance with its approved capital program;
  - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
  - (iii) with the prior written approval of the Assistant Deputy Comptroller.

(4) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for approval. Upon approval by 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 IV

##### BOARD TO ENSURE COMPETENT MANAGEMENT

(1) Within sixty (60) days, the Board shall ensure that the Bank has competent management in place on a full-time basis in its President, Chief Financial Officer, Senior Loan

Officer, Collections Officer, Chief Auditor, and Compliance Officer positions to carry out the Board's policies, ensure compliance with this Agreement, applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Within sixty (60) days, the Board shall review the capabilities of the Bank's management to perform present and anticipated duties, and the Board will determine whether management changes should be made, including the need for additions to or deletions from current management.

(3) For incumbent officers in the positions mentioned in Paragraph (1) of this Article, the Board shall within sixty (60) days assess each of these officers' experience, other qualifications and performance compared to the position's description, duties and responsibilities.

(4) If the Board determines that an officer will continue in his/her position but that the officer's depth of skills needs improvement, the Board will within ninety (90) days develop and implement a written program, with specific time frames, to improve the officer's supervision and management of the Bank. At a minimum the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to supervise effectively;
- (b) a program to improve the effectiveness of the officer;
- (c) objectives by which the officer's effectiveness will be measured; and
- (d) a performance appraisal program for evaluating performance according to the position's description and responsibilities and for measuring performance against the Bank's goals and objectives.

Upon completion, a copy of the written program shall be submitted to the Assistant Deputy Comptroller.

(5) If a position mentioned in Paragraph (1) of this Article is vacant now or in the future, including if the Board realigns an existing officer's responsibilities and a position mentioned in Paragraph (1) of this Article becomes vacant, the Board shall within sixty (60) days of such vacancy submit the information required by paragraph (6) of this Article to the Assistant Deputy Comptroller regarding the person the Bank proposes to fill the vacant position. Upon receipt of a written confirmation that the Assistant Deputy Comptroller will not disapprove such person, the Board shall appoint such person to fill the vacant position and vest such person with sufficient executive authority as is appropriate to the position for the purpose of ensuring the Bank's compliance with this Agreement and the safe and sound operation of functions within the scope of that position's responsibility. Nothing herein shall preclude the Board from eliminating or combining any of the positions mentioned in paragraph (1), if such elimination or consolidation is identified in a strategic plan, or modification thereto, that has been approved by the Assistant Deputy Comptroller.

(6) Prior to the appointment of any individual to an executive officer 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.

(7) The Assistant Deputy Comptroller shall have the power of veto over the employment of the proposed executive officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer.

(8) The requirement to submit information and the prior veto provisions of this Article are based on the authority of 12 U.S.C. § 1818(b)(6)(E) and do not require the Comptroller to complete his review and act on any such information or authority within ninety (90) days.

## ARTICLE V

### PRODUCTS AND SERVICES - EXISTING OR NEW

(1) Prior to the Bank's involvement in any new products or services that have not been approved as part of the Bank's strategic plan or an approved modification thereto, the Board shall prepare a written analysis of said product or service. 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 strategic plan; or a modification thereto that is subject to approval by the Assistant Deputy Comptroller;
- (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; and
- (d) a profitability analysis, including growth projections and interest rate risk.

(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.

## ARTICLE VI

### MANAGEMENT INFORMATION REPORTS

(1) By the 20<sup>th</sup> day of each month, the Bank shall forward the following reports to the Assistant Deputy Comptroller for the prior month end:

- (a) a balance sheet and income statement;
- (b) a liquidity report; and
- (c) a report for each lending product including outstanding balance, delinquency rates, and annualized loss rate.

## ARTICLE VII

### CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or approval, 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) 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. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

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

/s/ H. Gene Robinson

H. Gene Robinson  
Assistant Deputy Comptroller  
Salt Lake City Field Office

February 14, 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

H.E. Scruggs, Chairman

12 Feb '03

Date

Signed

David G. Bragg

Feb. 17, 2003

Date

Signed

Larry V. Lunt

7 Feb 03

Date

Signed

David K. McKown

2/7/03

Date

Signed

C. Bruce Miller

2/8/03

Date

Signed

R.W. Smith

2-7-03

Date

Signed

Justin Wheeler

2-11-03

Date