#2014-146

AGREEMENT
By and Between
Bank of Manhattan, N.A., El Segundo, California
and
The Comptroller of the Currency

Bank of Manhattan, N.A., El Segundo, California ("Bank") and the Comptroller of the Currency of the United States of America ("Comptroller") wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and, toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules and regulations.

The Comptroller has determined that the Bank has engaged in unsafe and unsound banking practices relating to its Board and management oversight and credit risk management and administration.

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) This Agreement shall not be construed to require the Bank to meet and maintain a specific capital level as described in 12 C.F.R. § 6.4(b)(iv).

Article II

<u>Compliance Committee</u>

(1) Within five (5) days of this Agreement, the Board shall appoint a Compliance Committee consisting of at least five (5) directors, the majority of which shall not be employees or controlling shareholders 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.

(2) The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Agreement and shall meet at least monthly.

(3) By no later than December 31, 2014, and by the end of every calendar month 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 provide a summary report of the progress reached in attaining compliance with each Article of this Agreement to the Assistant Deputy Comptroller within fifteen (15) days of the end of each calendar quarter (e.g., January 15th, April 15th, July 15th, and October 15th), beginning with the fourth quarter of 2014.

(5) All reports, plans or programs which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded, by overnight mail or via email, to the following:

Assistant Deputy Comptroller
Los Angeles Field Office
550 North Brand Blvd., Suite 500
Glendale, California 91203
Richard.Dixon@OCC.treas.gov

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

Article III

Management and Board Supervision

(1) Within ninety (90) days of this Agreement, the Board shall review the Bank's management structure, composition, staffing, corporate governance, and Board oversight, in consideration of the concerns and due diligence failures identified in the Report of Examination for the examination that began on July 14, 2014 (the "2014 ROE"), and based upon this review, prepare and submit for a prior written determination of no supervisory objection, a program, complete with policies, procedures, and designated responsibilities, designed to ensure the Bank: returns to profitability, attains compliance with this Agreement, and operates in a safe and sound manner and in compliance with applicable laws, regulations, and regulatory conditions imposed in writing. At a minimum, as part of, or based upon its review, the Board shall:

(a) develop revised operating policies and procedures designed to ensure the Board provides proper oversight of the affairs of the Bank that addresses or includes:

(i) the Bank's corporate governance and decision-making process;

(ii) the Bank's committees and the structure and purpose of each committee;

(iii) review procedures and assigned accountability for the accuracy of the Bank's Consolidated Report of Condition and Income ("Call Report");

(iv) an organizational chart;

(v) job descriptions for all executive officers; and

(vi) the establishment of clear lines of responsibility and authority for all members of management;

(b) assess each of the Bank’s current officers’ experience, other qualifications a performance compared to the position’s duties and lines of authority, make changes if appropriate, and provide a training program to address any identified weaknesses in the skills and abilities of the Bank’s management team;

(c) establish a risk tolerance statement to define, measure, monitor and control the risk the Board is prepared to accept in pursuit of the Bank’s strategic goals, that addresses at a minimum:

(i) risk capacity: the maximum level of risk before regulatory capital, liquidity or other obligations are breached;

(ii) risk profile: the point in time assessment of net risk exposures after adjusting for mitigants; and

(iii) risk limits: the quantitative measures using forward-looking assumptions to allocate risk;

(d) improve the strategic planning process to ensure growth in new, expanded, and modified product and/or service initiatives are fully supported, launched and implemented in a safe and sound manner to include at a minimum:

(i) the identity of present and future product lines (i.e. assets and liabilities) and /or services and document how they are consistent with the Board’s risk appetite and approved strategic and operational plans;

(ii) an evaluation of the level of expertise commensurate with the risk and scope of the strategic initiative(s) to include risk management and administration, as well as production goals;

(iii) a determination of whether the Bank's capital and other resources are adequate to carry out the strategic initiatives that are incorporated within the capital plan;

(iv) the development of contingency plans (both financial and business continuity);

(v) the development of prudent limits on growth and scale of new product or significant expansion of existing product launches;

(vi) the inclusion of key risk management functions (e.g. legal, compliance, and risk management) in the initial review and vetting of proposed new products or services and significant expansions of existing products; and

(vii) the development of processes for third party review and validation of the risk management program for newly instituted products or services and significant expansions of existing products;

(e) develop procedures to ensure new products and services (or significant expansions of existing products) are appropriately launched to include at a minimum, a requirement for a comprehensive, written analysis of the proposed product or service for submission to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection that addresses:

(i) the risks and benefits of the product or service;

(ii) how the product or service is consistent with the Bank's strategic plan;

(iii) the adequacy of the Bank's staffing, expertise, MIS, internal controls, and written policies and procedures to identify, measure, monitor and control the associated risks;

(iv) a profitability analysis that evaluates projected revenues, costs, margins, and other relevant data under various stressed scenarios;

(v) the impact the product or service will have on the methodology and calculation of the Bank's Allowance for Loan and Lease Losses and other accounting reserves; and

(vi) the staff, infrastructure, and any other changes necessary to ensure the product or service may be offered, is launched, and thereafter is provided in compliance with applicable consumer laws and regulations, the Bank Secrecy Act, and the rules and regulations of the Office of Foreign Assets Control ("OFAC");

(f) develop policies and procedures to ensure that management appropriately responds to any audit or compliance criticisms, and regulatory violations of law or conditions imposed in writing, unsafe or unsound banking practices, breaches of fiduciary duty, and Matters Requiring Attention (collectively, "material criticisms"); and

(g) assigns accountability for the various policies and procedures required by this program.

(2) 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 required by this Article.

(3) Prior to entering into any contract with any person for any Board or senior executive officer position, the Board shall submit the name and qualifications of the individual(s), a written statement of the Board's reasons for selecting the proposed employee, a written description of the

proposed employee's duties and responsibilities, the proposed terms of employment, and a copy of the contract to the Assistant Deputy Comptroller for a prior written determination of no objection. Prior to submission of such contract to the Assistant Deputy Comptroller, the Board shall ensure that the contract fully complies with the requirements of all applicable laws, regulations, and regulatory guidance relating to executive compensation, golden parachute, and indemnification payments.

(4) If a Board or senior executive officer position (as defined in 12 C.F.R. § 5.51), including, but not limited to, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, and Chief Lending Officer is, or at any time becomes, vacant, the Board shall, with ninety (90) days of such vacancy, after complying with the prior notice requirements of 12 C.F.R. § 5.51, appoint a capable person to the vacant position who shall be vested with sufficient executive authority to ensure the Bank's compliance with this Agreement and the safe and sound operation of functions within the scope of that position's responsibility. If the Bank is unable to locate an acceptable person to fill the vacancy within ninety (90) days, despite its best efforts, the Bank may request an extension of time in writing from the Assistant Deputy Comptroller.

Article IV

Strategic and Capital Plan

(1) Effective immediately, the Bank shall only declare dividends when:

(a) the Bank is in compliance with the Bank's Three-Year Plan as described below;

(b) the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and

(c) the Bank has received a prior written determination of no supervisory objection from the Assistant Deputy Comptroller.

(2) Effective as of the date of this Agreement, the Bank shall not make any new loans under its leveraged lending or indirect auto lending programs until it receives prior written determinations of no supervisory objection to the Three-Year Plan required by Paragraph (3) below and to the risk management programs required by Articles V and VI.

(3) Within one-hundred and twenty (120) days of this Agreement, the Board shall develop, implement, and thereafter ensure Bank adherence to a written Strategic and Capital Plan ("Three-Year Plan") for the Bank covering at least the next three years, complete with specific time-frames that incorporate the requirements of this Article and that is consistent with the risk tolerances and follows the procedures developed under Article III of this Agreement. The Bank's Three-Year Plan may be separated into two separate components, a strategic plan and a capital plan. 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.

(4) The Bank's Three-Year Plan shall provide specific plans to ensure the Bank has sustained profitability and include projections for the Bank's capital adequacy, overall risk profile, earnings performance, growth expectations, balance sheet mix, off-balance sheet activities, liability structure, liquidity adequacy, product line development, lending and market segments that the Bank intends to achieve, and at a minimum, address or include:

- (a) the development of strategic goals and objectives to be accomplished over the short and long term;
- (b) identification of the major areas and means by which the Board and management will seek to improve earnings performance, that focuses in particular on items contributing to Bank interest income, cost of funds, and non-interest expenses, to include a cost/benefit analysis of the Bank's significant product lines;
- (c) recognition that the Bank cannot offer or introduce new products, enter new market segments, or grow excessively until it adopts an appropriate credit culture, implements sound risk management principles, and returns the Bank's condition to a satisfactory condition;

(d) steps and costs for the dissolution or sale of any discontinued product lines or departments;

(e) a dividend policy that only permits the declaration of a dividend in accordance with Paragraph (1) of this Article;

(f) specific plans for the maintenance of adequate capital as required by the OCC, and consistent with the Bank's overall condition and risk profile;

(g) projections for growth or asset reduction and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, provision expense, and off balance sheet activities;

(h) projections of the sources and timing of additional capital, to meet the Bank's current and future needs;

(i) contingency plans that identify alternative methods should the capital primary sources not be available;

(j) systems to monitor the Bank's progress in meeting the plan's goals and objectives; and

(k) provisions for plan updates and review by the Board on an annual basis, or more frequently if necessary.

(5) 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 Bank's Three-Year Plan.

(6) The Board shall review and revise as appropriate, the Three-Year Plan, at least annually. Prior to adoption by the Board of any revision or amendment to the Bank's Three- Year Plan, any such subsequent amendment or revision, including but not limited to, the offering or introduction of new products, shall be forwarded to the Assistant Deputy Comptroller for review and prior written

determination of no supervisory objection. Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall adopt and the Bank shall immediately implement and adhere to the Bank's Three-Year Plan, as revised or amended.

(7) The Bank may not initiate any action that deviates significantly from the Board-approved Three-Year Plan without a written determination of no supervisory objection from the Assistant Deputy Comptroller. The Board must give the Assistant Deputy Comptroller thirty (30) day advance, written notice of its intent to deviate significantly from the Bank's Three-Year Plan, along with an assessment of the impact of such change on the Bank's condition, including a profitability analysis and an evaluation of the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with the change in the Bank's Three-Year Plan.

(8) For the purposes of this Article, changes that may constitute a significant deviation from the Bank's Three-Year Plan include, but are not limited to, a change in the Bank's marketing strategies, marketing partners, underwriting practices and standards, credit administration, account management, collection strategies or operations, accounting processes and practices, or funding strategy, any of which, alone or in aggregate, may have a material impact on the Bank's operations or financial performance; or any other changes in operations, or external factors that may have a material impact on the Bank's operations or financial performance.

Article V

<u>Leveraged Lending</u>

(1) Within sixty (60) days of this Agreement, the Board shall review, revise, and submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a program designed to ensure the Bank's leveraged lending policies and procedures conform with safe and sound practices, OCC Bulletin 2013–9, "*Interagency Guidance on Leveraged Lending*," (March 22, 2013), and

Banking Circular 181 (REV), "*Purchases of Loans in Whole or In Part-Participations*," (Aug. 2, 1984), and address or include at a minimum:

(a) a limit for leveraged lending commitments to not exceed fifty percent (50%) of the Bank's total risk-based capital;

(b) an evaluation, and if appropriate, additions to, or training of personnel directly involved in leveraged credit decisions;

(c) periodic reporting to the Board that include performance characteristics, industry exposures, risk rating distribution, collateral support, and performance measures including non-compliance with covenants, restructurings, delinquencies, and charge-offs, for all leveraged lending;

(d) leveraged lending underwriting standards, to include the following minimum requirements:

  (i) a prohibition against purchasing any participation for which the Bank does not have the knowledge, skills, or ability to properly underwrite on its own;

  (ii) standards, procedures, and limits for the purchase of leveraged loans and participations;

  (iii) preparation and documentation of complete, independent analysis of the credit quality of the obligations to be purchased, as well as an independent analysis of the value and lien status of the collateral pledged;

  (iv) maintenance of current, complete financial information and analysis on the borrower during the term of the loan;

  (v) the identification, waiver (if appropriate), and mitigation (if appropriate) of any exceptions to the Bank's lending policies and procedures; and

(vi) the establishment of officer and managerial responsibility and accountability for compliance with the Bank's policies and procedures;

(e) procedures for periodically stress-testing the leveraged lending portfolio in accordance with OCC Bulletin 2012-33, "*Community Bank Stress Testing*," (Oct. 18, 2012); and

(f) procedures to ensure the risks of leverage lending are appropriately accounted for and considered in the Bank's calculation and methodology for computing the Allowance for Loan and Lease Losses and adequacy of the Bank's capital;

(g) procedures to aggregate, track and eliminate leveraged lending exceptions to the Bank's lending policies and procedures; and

(h) immediate and ongoing training to ensure staff, officers and other applicable personnel understand and can apply the Bank's leveraged lending policies and procedures developed pursuant to this Article.

(2) 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 developed pursuant to this Article.

Article VI

<u>Indirect Auto Lending</u>

(1) Within sixty (60) days of this Agreement, the Board shall review, revise, and submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a program designed to ensure the Bank's indirect auto lending policies and procedures conform with safe and sound practices, and address or include at a minimum:

(a) concentration sub-limits, expressed as a percentage of capital, for loan types that present differentiated credit risk characteristics;

(b) specific underwriting criteria to control risks relevant to different vehicle types and identified concentration sub-limits;

(c) a matrix for policy and underwriting exceptions with detailed determinations for acceptable mitigating factors;

(d) minimum collateral requirements and methods for determining auto values;

(e) methods for determining debt to income components, especially for luxury car purchases by borrowers with complex tax returns and other difficult to assess financial information;

(f) establish higher minimum debt to income requirements for loan amounts and amortization periods above certain thresholds; and

(g) develop appropriate management and Board reporting to ensure the risk in the portfolio is appropriately monitored and controlled to include at a minimum:

   (i) prepare monthly reports that isolate credit score, loan to value, debt to income, and other objective risk characteristics to identify and segment risk of default and loss and to identify trends in risk of default and loss over time;

   (ii) the collection of relevant data fields to include purchase money and down payment information at a minimum;

   (iii) review and identify outstanding loans made with exceptions to down payment requirements and legacy loans made without required credit scores;

   (iv) aggregate, track, and report the level of underwriting exceptions in the portfolio, including separate categories of borrowers with multiple exceptions (layered risk); and

(v) collect and track relevant data fields to capture mitigating factors used to support loan approval decisions.

Article VII

<u>Credit Risk Management</u>

(1) Effective as of the date of this Agreement, the Board shall ensure that it maintains appropriate staff, underwriting standards, management information systems, accounting, and credit risk management controls over all future and existing credit-related products, services, and portfolios. The Board shall establish specific accountability and processes to ensure the safe and sound launch and management of all future and existing credit-related products, services, and portfolios.

(2) Effective as of the date of this Agreement, the Board shall revise, adopt, implement, and thereafter ensure adherence to written policies and procedures for maintaining an appropriate Allowance for Loan and Lease Losses ("Allowance") in accordance with GAAP. The Allowance 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 July 20, 2001 (OCC Bulletin 2001-37), and "Guidance and Frequently Asked Questions (FAQs) on the ALLL," dated Dec. 13, 2006 (OCC Bulletin 2006-47).

(3) Effective as of the date of this Agreement, the Board shall revise, adopt, implement, and thereafter ensure adherence to written policies and procedures for maintaining an appropriate repurchase reserve in accordance with GAAP to include, at a minimum: Accounting Standards Codification ("ASC") 860-20, *Sale of Financial Assets*, ASC 450, Contingencies, and ASC 460, *Guarantees*.

Article VIII

<u>Closing</u>

(1) Although the Board has by this Agreement consented to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the Assistant Deputy Comptroller, 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 him from so doing.

(3) Any time requirements specified in 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) This Agreement shall be effective upon execution by the parties hereto, and its provisions shall continue in full force and effect until such time as they shall be amended by written mutual consent of the parties to this 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. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract. The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities. The terms of this Agreement, including this Paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

/s/	November 20, 2014
Richard S. Dixon, Jr. Assistant Deputy Comptroller	Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank have hereunto set their hands on behalf of the Bank.

/s/	November 20, 2014
Chris Caras	Date
/s/	November 20, 2014
Harry W. Chenoweth	Date
/s/	November 20, 2014
J. Grant Couch, Jr.	Date
/s/	November 20, 2014
James Jones	Date
/s/	November 20, 2014
Brett Lawrence	Date
/s/	November 20, 2014
Terry L. Robinson	Date
/s/	November 20, 2014
Louis Smaldino	Date
/s/	November 20, 2014
Gary Wallace	Date
/s/	November 20, 2014
Stephen P. Yost	Date
/s/	November 20, 2014
Michael Zoeller	Date