

**#2017-037**

AGREEMENT BY AND BETWEEN  
American Investors Bank and Mortgage  
Eden Prairie, MN  
and  
The Comptroller of the Currency

American Investors Bank and Mortgage, Eden Prairie, MN (“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 found unsafe and unsound banking practices relating to credit administration practices, the Allowance for Loan and Lease Losses methodology, liquidity risk management, and capital and strategic planning at the Bank.

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)(7)(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 cause the Bank to not to be designated as an “eligible bank” for purposes of 12 C.F.R. § 5.3(g), unless otherwise informed in writing by the Comptroller.

(6) 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  
Minneapolis Field Office  
222 Ninth St South, Suite 800  
Minneapolis, MN 55402

## ARTICLE II

### HOME EQUITY LINE OF CREDIT RISK MANAGEMENT

(1) Within sixty (60) days of this Order, the Board shall develop a written program designed to assess and manage the credit risk associated with the Bank’s Home Equity Line of Credit (“HELOC”) portfolio consistent with OCC Bulletin 2005-22, *Home Equity Lending: Credit Risk Management Guidance*, dated May 16, 2005, and OCC Bulletin 2014-29, *Risk Management of Home Equity Lines of Credit Nearing their End-of-Draw Periods*, dated July 1, 2014. The Board shall forward a copy of the HELOC credit risk management program to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection. The program shall address weaknesses in the Bank’s HELOC credit risk management program identified in the most recent Report of Examination (“ROE”), and shall include, but not be limited to:

- (a) procedures to identify high-risk HELOCs at an early stage. The frequency of actions must be commensurate with the risk of the portfolio and individual borrower. Actions may include but are not limited to:
  - (i) periodically refreshing credit scores;
  - (ii) evaluating available information such as bankruptcy notifications, past due real estate taxes, overdrafts, payment status, or credit bureau information that could assist with identifying high risk customers;
  - (iii) periodically assessing utilization rates;
  - (iv) monitoring home values by geographic area;
  - (v) updating information on collateral values when significant market factors indicate a potential decline in home values, or when the borrower's payment performance deteriorates and greater reliance is placed on collateral; and
  - (vi) when property valuation models are used, ensuring they are periodically reviewed and validated;
- (b) information gathered pursuant to paragraph (1)(a) of this Article must be used to make reasonable and sound credit decisions to take timely preventive action such as freezing and reducing lines;
- (c) portfolio-wide account management practices and management information systems that incorporate data collected pursuant to paragraph (1)(a) of this Article, including, but not be limited to, HELOC Risk Rating and end-of-draw (EOD) monitoring reports; and

- (d) an EOD program that complies with OCC Bulletin 2014-29, *Risk Management of Home Equity Lines of Credit Nearing their End-of-Draw Periods*, including establishing modification programs that will be offered to borrowers experiencing hardship.

(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 HELOC credit risk management program.

### ARTICLE III

#### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within sixty (60) days, the Board shall revise the Bank's program for the maintenance of an adequate Allowance for Loan and Lease Losses (ALLL). The revisions shall be designed in light of (i) the comments on maintaining a proper Allowance found in the "Allowance for Loan and Lease Losses" booklet of the *Comptroller's Handbook* (June, 1996, May, 1998); (ii) U.S. generally accepted accounting principles ("GAAP"); (iii) OCC Bulletin 2006-47, *Interagency Policy Statement on the Allowance for Loan and Lease Losses* dated December 13, 2006; and (iv) the instructions for reporting the Allowance on the Call Report. At a minimum, the program must be revised to incorporate the following:

- (a) procedures to review and revise the credit loss history and provide adequate documented support for newly established loss history;
- (b) ensuring the ASC 450-20 analysis excludes all HFS loans and loans that need to be measured for impairment under ASC 310-10;

- (c) providing adequate narrative support for all qualitative factors including, but not limited to, the qualitative factors for concentration risk for each individual loan type; and
- (d) ensuring information that is used in the ALLL methodology is current and reliable including, but not limited to, DTIs that were updated from the HELOC scrub completed in 2016 and incorporating data collected pursuant to paragraph (1)(a) of Article II in the segregated HELOC pools.

(2) The ALLL program shall provide for a review of the ALLL by the Board at least once each quarter. Any deficiency in the ALLL shall be corrected in the quarter it is discovered, prior to filing the Call Report, by additional provisions from earnings. Written documentation of the factors considered and conclusions reached by the Board in determining the adequacy of the ALLL shall be maintained.

#### ARTICLE IV

##### CONCENTRATIONS OF CREDIT

(1) Within sixty (60) days, the Board shall develop a written program designed to identify, measure, monitor, and control concentrations of credit consistent with the “Concentrations of Credit” booklet of the *Comptroller’s Handbook* (December 2011, as revised). The Board shall forward a copy of the program to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection. The program shall address the concentration risk management weaknesses identified in the most recent ROE, and require policies and procedures that include, at a minimum, the following:

- (a) a reasonable and supportable overall concentration limit for HELOCs for both outstanding and total committed balances with sufficient consideration for the Bank's capital and ALLL balances;
- (b) an identification of the Bank's known and potential non-HELOC concentrations of credit, including, but not limited to, the Bank's concentrations identified in the Report of Examination dated as of September 30, 2016;
- (c) establishment of specific limits for each of the Bank's known and potential concentrations relative to capital based on the analysis performed under subparagraph (1)(b) of this Article;
- (d) establishment of concentration management information systems that incorporate the data collected pursuant paragraph (1)(a) of Article II of this agreement, including segmenting of concentrations by categories of similar risk and performance characteristics which must include, but are not limited to, segmenting, when possible, by:
  - (i) vintage, particularly when underwriting was changed or new product features were introduced;
  - (ii) credit scores;
  - (iii) combined loan-to-value ratios;
  - (iv) employer or industry; and
  - (v) geographical location; and
- (e) periodic monitoring and re-evaluation of concentration limits set by the Board to ensure the limits established pursuant to subparagraphs (a) and (c)

of this paragraph remain safe and sound, responsive to changes in market conditions, and within the Board's tolerance for risk.

(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 concentration risk management program.

## ARTICLE V

### LEASE FINANCING

(1) Within sixty (60) days, the Board shall adopt, implement and ensure adherence to policies and procedures designed to conform the Bank's lease financing line of business to laws, regulations and the "Lease Financing" booklet of the *Comptroller's Handbook* (August, 2014, as revised). At a minimum, the policies and procedures shall correct the weaknesses in the Bank's lease financing line of business identified in the most recent ROE, and shall include:

- (a) credit analysis expectations, repayment terms, collateral requirements, documentation standards, borrower equity, and guarantor standards in the policy;
- (b) requiring complete, accurate, and current analysis at underwriting and during annual reviews that includes, but is not limited to: cash flow, balance sheet, guarantor, and collateral analysis;
- (c) requiring current financial and collateral information at underwriting and, when applicable, during annual review; and

- (d) procedures to ensure that risk ratings for commercial leases conform to the “Rating Credit Risk” booklet of the *Comptroller’s Handbook* (April, 2001).

## ARTICLE VI

### LIQUIDITY RISK MANAGEMENT

(1) Within sixty (60) days, the Board shall develop, adopt, and thereafter ensure compliance with a comprehensive liquidity risk management policy (“Liquidity Policy”) that incorporates prudent risk management standards as set forth in the “Liquidity” booklet of the *Comptroller’s Handbook* (June 2012) and OCC Bulletin 2010-13, *Interagency Policy Statement on Funding and Liquidity Risk Management*, dated March 22, 2010. The Liquidity Policy shall emphasize the importance of cash flow projections, diversified funding sources, stress testing, a cushion of liquid assets, and a formal, well-developed contingency funding plan as primary tools for measuring and managing liquidity risk. In addition to the general requirements set forth above, the Liquidity Policy shall address the weaknesses in the Bank’s liquidity risk management identified in the most recent ROE and, at a minimum, shall:

- (a) set liquidity risk policy limits for, at a minimum:
  - (i) on-hand asset based liquidity;
  - (ii) loans-to-deposits;
  - (iii) level of unfunded HELOC commitments; and
  - (iv) dependency on wholesale funds;
- (b) require quarterly Board reports on the Bank’s liquidity position against the policy limits set pursuant to paragraph (1)(a) of this Article;



- (c) include a contingency funding plan that incorporates, at a minimum, quantitative projections and evaluations of expected funding needs and funding capacity based on realistic assessments of the behaviors of funding providers during moderate and severe stress events, and that incorporates, at a minimum:
  - (i) the potential funding needs related to unfunded commitments in the HELOC portfolio;
  - (ii) the impact of regulatory CAMELS ratings downgrades and the loss of Prompt Corrective Action (PCA) Well Capitalized status;
  - (iii) the potential impact from losing credit sensitive deposits, wholesale funding sources, and other volatile source of funding such as the ability to sell HELOC loan pools; and
  - (iv) assumptions of a roll-off rate of core deposits in a severe scenario.

## ARTICLE VII

### STRATEGIC PLAN AND GOVERNANCE

(1) Within sixty (60) days, the Board shall forward to the Assistant Deputy Comptroller, for review and prior written determination of no supervisory objection, a written Strategic Plan for the Bank covering at least a three-year period. The Bank's written Strategic Plan shall address all corrective actions related to strategic planning identified in the most recent ROE and shall include a projection of major balance sheet and income statement components. The Strategic Plan shall establish objectives and projections for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure,

capital and liquidity adequacy, product line development and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives, and it shall, at a minimum, include:

- (a) the development of strategic goals and objectives to be accomplished over the short and long term, including key financial indicators, risk tolerances, and realistic strategies to improve the overall condition of the Bank;
- (b) an assessment of the Bank's strengths, weaknesses, opportunities, and threats that impact strategic goals and objectives;
- (c) 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 paragraph (1)(a) of this Article; and
- (d) an identification and prioritization of initiatives and opportunities, including timeframes that take into account the requirements of this Agreement.

(2) Upon receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection to the Strategic Plan, the Board shall adopt, implement, and thereafter ensure Bank adherence to the Strategic Plan.

(3) The Board shall review and update the Strategic Plan at least annually, no later than January 31 each year, and more frequently if necessary or if required by the Assistant Deputy Comptroller in writing, to cover the next three-year period.

(4) Prior to the Bank's involvement in any new products or services, or the material expansion of any existing products and services, the Bank shall prepare a written analysis of said

product or service consistent with the analysis recommended in OCC Bulletin 2004-20, *Risk Management of New, Expanded, or Modified Bank Products and Services*, dated May 10,

2004. The analysis shall, at a minimum, include:

- (a) an assessment of the risks and benefits of the product or service to the Bank;
- (b) 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
- (c) a profitability analysis, including growth projections, interest rate risk, and liquidity considerations.

(5) A copy of the analysis prepared pursuant to paragraph (4) shall be submitted to the Assistant Deputy Comptroller for a determination of no supervisory objection before entering or materially expanding a product or service.

(6) The Board shall establish a new Board meeting schedule to ensure the frequency of Board meetings is reasonable to address the concerns identified in the ROE and to improve governance processes to appropriately monitor and ensure the effectiveness of the Board and management's control systems.

## ARTICLE VIII

### CAPITAL PLANNING

(1) By no later than June 30, 2017, the Bank shall achieve and thereafter maintain the following minimum capital levels (as defined in 12 C.F.R. Part 3):

- (a) leverage ratio at least equal to nine percent (9%);
- (b) common equity tier 1 capital ratio at least equal to twelve percent (12%);  
and
- (c) total capital ratio at least equal to fourteen percent (14%).

(2) The requirement in this Order 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. Parts 6 and 165, pursuant to 12 C.F.R. § 6.4(c)(1)(v).

(3) Within sixty (60) days of the date of this Agreement, the Board shall prepare and forward to the Assistant Deputy Comptroller for review, pursuant to paragraph five (5) of this Article, a written Capital Plan for the Bank, consistent with the Strategic Plan required pursuant to Article VIII, covering at least a three-year period. The capital planning process shall be consistent with OCC Bulletin 2012-16, *Guidance for Evaluating Capital Planning and Adequacy*, dated June 7, 2012, and shall ensure the integrity, objectivity, and consistency of the process through adequate governance. The written Capital Plan shall establish projections for the Bank’s overall risk profile, earnings performance, growth expectations, balance sheet mix, off-balance sheet activities, liability and funding structure, and capital and liquidity adequacy that the Bank intends to achieve, and, at a minimum:

- (a) include specific plans for the maintenance of adequate capital, which shall in no event be less than the requirements of paragraph one (1) of this Article;
- (b) identify and evaluate all material risks including, but not limited to:
  - (i) HELOC concentrations and other credit concentrations;

- (ii) aggressive loan growth over the past two years and growth plans in the future;
  - (iii) funding pressures or reliance on volatile funding sources;
  - (iv) planned capital expenditures and holding company debt;
  - (v) major asset and liability strategies or changes, including new products and services; and
  - (vi) exposure to market risks;
- (c) determine the Bank's capital needs in relation to material risks and strategic direction consistent with the Strategic Plan pursuant to Article VIII by, among other things,
- (i) setting minimum capital ratios based on exposures and the Board's risk tolerance;
  - (ii) developing a strategy to meet these capital needs and track progress;
  - (iii) altering strategic plans as necessary in order to address unmet needs; and
  - (iv) identifying and quantifying realistic contingent sources of capital;
- (d) include detailed quarterly financial projections; and
- (e) include specific plans detailing how the Bank will comply with restrictions or requirements set forth in this Agreement that will have an impact on the Bank's capital.

(4) The projections used in the Capital Plan shall be based, in part, on credit stress testing measurement tools adopted by the Bank in compliance with OCC Bulletin 2012-33, *Community*

*Bank Stress Testing*, dated October 18, 2012. Assumptions used in the tools must document and support:

- (a) credit loss rates over at least a two-year period in the stress event which, for HELOCs and closed-end junior lien residential loans, initially may be based on the Bank's own loss rates for junior lien residential real estate loans during the last economic downturn;
- (b) pre-provision net income, including implications for reduced net income during the stress event for impacts to revenue and expenses from elevated non-performing assets and increased collection costs, and possible increases in funding costs; and
- (c) increased provision expenses to maintain an adequate ALLL.

(5) Prior to adoption by the Board, a copy of the Bank's written Capital Plan, and any subsequent amendments, revisions, or updates, shall be submitted to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection. The Board shall review and update the Bank's written Capital Plan, at least annually and more frequently if required by the Assistant Deputy Comptroller in writing, to cover the next three-year period. Subsequent amendments or revisions to the Bank's written Capital Plan shall be submitted to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection. At the next Board meeting following receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection, the Board shall adopt and the Bank, subject to Board review and ongoing monitoring shall implement and thereafter adhere to the written Capital Plan and any amendments or revisions thereto.

(6) At least quarterly, the Board shall:

- (a) review financial reports and earnings analyses that evaluate the Bank's performance against the goals and objectives established in the Capital Plan, as well as the Bank's written explanation of significant differences between the actual and projected balance sheet, income statement, and expense accounts, including descriptions of extraordinary and/or nonrecurring items; and
- (b) prepare a written evaluation of the Bank's performance against the written Capital Plan, which shall include a description of the actions the Board will require the Bank to take to address any deficiencies.

(7) The Board's review and preparation of the written evaluation shall be documented in the Board meeting minutes.

## ARTICLE IX

### OTHER PROVISIONS

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review, 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/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.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Agreement in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Agreement;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Agreement;
- (c) follow-up on any 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.

(6) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States. Notwithstanding the absence of mutuality of obligation, or of





