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## SUPERVISORY AGREEMENT

This Supervisory Agreement ("Agreement") is made and is effective this 20<sup>th</sup> day of January, 199~~3~~<sup>8</sup>, by <sup>BB ADA</sup> and between American Federal Bank, a federal savings bank, Madison, South Dakota, Docket No. 3157 (hereinafter referred to as "American Federal" or the "Institution"), and the Office of Thrift Supervision ("OTS"). This Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Institution and the OTS. It is understood and agreed that this Agreement is a "written agreement" entered into with the OTS within the meaning of 12 U.S.C. §§ 1818(b) and (i), as amended.

**WHEREAS**, the OTS is of the opinion that Institution has engaged in certain acts and practices in conducting the business of the institution, which would provide grounds for the initiation of cease and desist proceedings against it by the OTS, and

**WHEREAS**, without admitting or denying any fault and in the interest of regulatory compliance and cooperation, the Institution is willing to enter into this Agreement to avoid the initiation of cease and desist proceedings, and

**WHEREAS**, the OTS is willing to forbear from the initiation of cease and desist proceedings against the Institution on the subjects covered by this Agreement for so long as the Institution is in compliance with the provisions of the Agreement that pertain to such subjects,

NOW, THEREFORE, in consideration of the OTS's above-stated forbearance from initiation of cease and desist proceedings against the Institution, it is agreed between the parties hereto as follows:

1. American Federal shall receive twenty thousand five hundred dollars (\$20,500) in accordance with a promissory note from Bill Burnham dated ~~November~~ <sup>January</sup> 20, 1993, <sup>BB ADD</sup> which in any event shall be paid in full by June 30, 1993. If any payment required under the terms of the note is not made by its due date, the Institution shall take all action necessary to collect any amount owing.
2. Business Plan. The Institution and its directors, officers, and employees shall implement and make their best efforts to follow the Business Plan submitted in conjunction with its proposed stock conversion. Provided, that there shall be no material or significant modifications, changes in, or deviations from the Business Plan unless and until such modifications, changes, or deviations have been submitted to the Regional Deputy Director for review and comment. A material or significant modification, change in, or deviation from the Business Plan will be considered to have occurred if the Institution engages in any type of activity not provided for in its Business Plan or exceeds from one quarter to the next by more than ten (10) percent the level of any of the following activities contemplated in its Business Plan: residential mortgage lending, nonresidential mortgage lending, consumer lending, commercial lending or investment securities activities. The ten (10) percent variance will be determined by comparing the individual line items in the Institution's quarterly Thrift

Financial Report Statement of Condition to individual line items, for the same period ending, as contained in the Institution's Business Plan balance sheet pro forma statements.

3. Officer Compensation. The Institution shall not make or approve the payment of any bonus to, or an increase in the compensation of, Bill Burnham unless and until both of the following conditions have been met.
  - a. All of the plans, policies, and procedures required to be developed or revised under this Agreement have been adopted by the board of directors pursuant to the requirements of this Agreement;
  - b. The bonus or increase in compensation is based on, and in conformance with, a board approved officer compensation program that has been accepted in writing by the Regional Deputy Director. To be acceptable, such program must assess management's performance based on safety and soundness and require review of compensation levels using information from comparable institutions, which shall include comparison to statistical information obtainable from the Savings and Community Bankers of America, or similar comprehensive comparative statistical compensation reports.
4. American Federal shall account for gains and losses in accordance with GAAP and OTS laws and regulations so as to correctly reflect income. In the event of a conflict between GAAP and OTS laws and regulations, the Institution shall comply with OTS laws and regulations.

5. American Federal has submitted to the OTS an amended Asset Classification Policy, Loan Review System, Loan Underwriting Standards, Interest Rate Risk Policy, and Investment Policy. American Federal shall make such changes as may be necessary to obtain OTS approval of said policies and thereafter the Institution and its directors, officers, and employees shall implement and follow such plans and procedures. Any subsequent modifications of these plans and procedures must be approved in writing by the Des Moines OTS Regional Deputy Director prior to being implemented.
6. a. Each member of the board of directors owes fiduciary duties to the Institution and its depositors. Notwithstanding that certain provisions of this Agreement require the board of directors to submit various matters to the Regional Deputy Director for the purpose of review and comment, such regulatory oversight does not derogate or supplant the fiduciary duties owed by the members of the board of directors of the Institution. The board of directors, at all times, shall have the ultimate responsibility for directing the safe and sound operation of the Institution.
- b. In connection with its oversight of the Institution, the board of directors shall, at a minimum, obtain and consider all applicable information suggested in the Director Information Guidelines, published by the OTS in December 1989.
- c. The board of directors of the Institution shall take prompt action for the purpose of causing the Institution to comply with this Agreement.

7. The board of directors, and each director individually, shall, at each regular meeting, formally resolve that, to the best of his/her knowledge and belief, and based on a prudent review, during the previous calendar month, the Institution and all its subsidiaries complied with each provision of this Agreement currently in effect, except as otherwise stated. The words "to the best of his/her knowledge, and based on a prudent review" encompasses, among other things, a prudent review of a written report prepared monthly by management setting forth factual details regarding the Institution's compliance with each of the obligations under this Agreement. The resolution shall specify in detail how, if at all, full compliance was found to be lacking.
8. Reference in this Agreement to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the effective date of this Agreement and references to successor provisions as they become applicable.
9. All other technical words or terms used in this Agreement, for which meanings are not specified or otherwise provided by the provisions of this Agreement, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, or Federal Deposit Insurance Act, as amended ("FDIA"). Any such technical words or terms used in this Agreement and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

10. a. In the instance that any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
  - b. Nothing in this Agreement shall be construed as permitting the Institution to violate any law, rule, regulation, or policy statement to which it is subject.
  - c. Except as otherwise noted, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, delivered to, or filed with either the Regional Deputy Director or the Institution shall be made in writing, mailed, first class, airmail postage prepaid or physically delivered, or telecopied, telexed or sent by other means of electronic transmission and confirmed by mail, first class, airmail postage prepaid, or physically delivered and addressed, if to the OTS, to the Regional Deputy Director I, Office of Thrift Supervision, Regency West 2, Suite 300, 1401 50th Street, West Des Moines, Iowa 50265 and, if to the Institution, to American Federal Bank, a federal savings bank, Egan Avenue at Second Street North, P.O. Box 485, Madison, South Dakota 57042.
11. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) the terms used in this Agreement have the meanings assigned to them in this Paragraph 13; (b) all accounting terms

not otherwise defined have the meanings assigned to them in accordance with generally accepted accounting principles, except that if such terms are defined in the Rules and Regulations of the OTS, such regulatory definitions shall control; (c) all terms not otherwise defined herein that are defined in the HOLA, the FDIA, and FIRREA, the Rules and Regulations of the OTS (including, without limitation, 12 C.F.R. §§ 500.1 et seq., 541.1, et seq., and 561.1, et seq. (1991)) or its publicly available Bulletins and Advisory Memoranda shall have the meanings assigned to them in such statutes, rules and regulations, Bulletins, and Advisory Memoranda; and (d) all technical words or terms not subject to a definition in this Agreement shall have the meanings that accord with the best custom and usage in the thrift and banking industries. As used in this Agreement:

- a. "make" means to enter into a binding obligation to provide loan funds.
- b. "affiliated person" shall be as defined in 12 C.F.R. § 561.5.
- c. "HOLA" means the Home Owners' Loan Act, as amended, 12 U.S.C. § 1464, et seq. (Supp. I 1989).
- d. "FDIA" means the Federal Deposit Insurance Act, as amended.
- e. "FIRREA" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183.

12. Termination. The provisions of this Agreement are effective upon its issuance by the OTS, through its authorized representative. This Agreement shall remain in effect until terminated, modified, or suspended by the OTS, acting through its Regional Deputy

Director or his designee. The Institution may request that this Agreement be terminated after it has undergone a full examination that shows full compliance with this Agreement to the satisfaction of the Regional Deputy Director or his designee.

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

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officer or designated agent. A certified copy of the Resolution of the Board of Directors of Institution authorizing the execution of this Agreement is attached hereto and made part hereof.

AMERICAN FEDERAL BANK, a federal  
savings bank, MADISON, SOUTH DAKOTA

By: \_\_\_\_\_

OFFICE OF THRIFT SUPERVISION

By: \_\_\_\_\_  
Regional Deputy Director I

CERTIFIED COPY OF  
RESOLUTION OF  
BOARD OF DIRECTORS

I, the undersigned, being the duly qualified Secretary of American Federal Bank, a federal savings bank, Madison, South Dakota ("Institution"), hereby certify that the following is a true copy of a resolution duly adopted by its board of directors at a meeting duly called and held on January 19, 199~~2~~<sup>3</sup>, that at said meeting a quorum was present and voting throughout, and that said resolution has not been rescinded or modified and is now in full force and effect:

RESOLUTION

WHEREAS, the officers and directors of Institution have been advised that OTS representatives believe Institution to have engaged in certain acts and practices in conducting the business of the institution, which would provide grounds for the initiation of cease and desist proceedings against Institution by the OTS, and

WHEREAS, said officers and directors have been informed that the OTS will forbear from the initiation of cease and desist proceedings on the subjects covered by the attached Supervisory Agreement if it is executed by the Institution and its terms are thereafter carried out by the Institution, and

WHEREAS, the directors of Institution have read and considered the proposed Supervisory Agreement ("Agreement") attached to the minutes of the meeting of the board of directors held on January 19, 199~~2~~<sup>3</sup>, and after due consideration, and in the interest of regulatory compliance and cooperation, have determined to enter into the proposed Agreement:

NOW, THEREFORE, BE IT RESOLVED, That the proposed Agreement, a copy of which is attached hereto, be and is hereby approved by the board of directors of Institution. The President of the Institution is authorized to sign and execute this Agreement on behalf of the Institution. The officers and employees of Institution are directed and authorized to take all necessary steps to implement immediately the terms of the Agreement.

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of Institution this 20<sup>th</sup> day of January, 1993. <sup>bb</sup> *ADA*

\_\_\_\_\_  
Secretary

PROMISSORY NOTE

WHEREAS, American Federal Bank,fsb ("Bank") has previously paid Mr. Bill Burnham ("Executive") a bonus for the 1989 fiscal year in the amount of \$20,500.00 ("Bonus"),

NOW THEREFOR, be it agreed by and between th Bank and the Executive that such Bonus shall be repaid as follows:

Executive shall either pay directly to the Bank the sum of the Bonus (\$20,500.00) during the first six months of the calendar year 1993, or Exective shall authorize the deduction or such amounts from Executive's gross pay in monthly installments. In any event, such payments or deductions shall be made so that the Bonus amount shall be repaid in full to the Bank not later than June 30, 1993.

The undersigned hereby acknowledges and agrees to the terms and conditions as set forth above.



\_\_\_\_\_  
Bill Burnham, Executive

January 20, 1993  
Date

BY \_\_\_\_\_  
American Federal Bank, F.S.B.  
Bill Burnham, President

January 20, 1993  
Date

SEAL