



**Comptroller of the Currency
Administrator of National Banks**

Licensing Department
250 E Street, S.W.
Washington, D.C. 20219

**Conditional Approval #905
June 2009**

May 29, 2009

Charles E. Greef
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202

Re: Application to establish a new national bank, Carlile Bank, National Association
Application Control Number: 2009-SO-01-0001
Charter Number: 24924

Dear Mr. Greef:

The Office of the Comptroller of Currency (“OCC”) hereby grants conditional preliminary approval to the application to establish a new national bank with the title of Carlile Bank, National Association (the “Bank”). This approval is granted after a thorough review of the application, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by the Bank’s representatives during the application process. This approval is also subject to the conditions set out herein.

The OCC’s decision to grant preliminary conditional approval is made with the understanding that the Bank will apply for Federal Reserve membership and will obtain deposit insurance from the Federal Deposit Insurance Corporation (“FDIC”).

The OCC has granted conditional preliminary approval only. Final approval and authorization for the Bank to open will not be granted until pre-opening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke this conditional preliminary approval if the OCC deems any interim development warrants such action.

Background

The Bank will be a wholly-owned subsidiary of Carlile Bancshares, Inc. (the “Company”), a Texas corporation organized to become a bank holding company for the Bank. The Company will be a one-bank holding company and will own all of the issued and outstanding shares of the Bank. The principal shareholders of the Company are anticipated to be Tom C. Nichols and Rick J. Calhoun, two of the organizers and proposed directors of the Bank. In addition to the two principal shareholders, there will also be a number of other shareholders (all shareholders collectively, the “Investors”). The OCC understands that the Company will apply to the Board of Governors of the Federal Reserve System to become a bank holding company and acquire the Bank.

The Bank is being organized primarily for the purpose of assuming liabilities and purchasing assets from the FDIC acting as the receiver of a depository institution, inasmuch as only chartered depository institutions may assume deposit liabilities from the FDIC.¹ The Investors in the Company and the Bank desire to have the opportunity to assume liabilities and purchase assets from the FDIC as receiver of a depository institution. The Investors, through Subscription Agreements to purchase shares in the Company, have committed to invest funds in the Company to enable the Bank to assume liabilities and purchase assets from the FDIC.² The applicants represent that sufficient capital will be injected to ensure the Bank is well-capitalized when it opens for business and thereafter. The organizers and proposed directors of the Bank and other individuals associated with the Investors have experience in operating depository institutions.

Since the Bank would not commence operations until after its bid for a particular institution is accepted by the FDIC, the specific size, scope, and activities of the Bank will not be determined until it acquires the business of a specific failed institution from the FDIC.³ Thus, the organizers could not include a detailed specific comprehensive business plan in the charter application before preliminary approval. However, based upon the information provided in the application, including in particular the experience of proposed key management of the Bank, the OCC concluded the Bank could receive preliminary approval, subject to the requirement that the Bank follow an organizing process that includes OCC review as it considers potential acquisition

¹ The organizers anticipate that the Bank’s first transaction would be an assumption of liabilities and purchase of assets from the FDIC as receiver of a failed institution. Subsequently, other transactions with troubled institutions could occur.

² In order to ensure that the Bank has funds immediately available to consummate a purchase and assumption transaction with the FDIC if the Bank is the winning bidder for a failure resolution transaction, the applicants represent that the Investors will place the funds to purchase the Company shares in an escrow account with a third party financial institution prior to the FDIC opening the Bank’s bid on a failing financial institution.

³ For the same reason, the location of the Bank (Fort Worth, Texas, for purposes of the application and this preliminary approval) may change prior to final approval to reflect the location of the institution acquired from the FDIC.

transactions. This will enable the OCC to address particular safety and soundness issues raised by a proposed acquisition as the Bank proceeds with an acquisition. Accordingly, the OCC has determined that the application meets the regulatory factors for preliminary conditional approval.

It is anticipated that the OCC would grant final approval for the Bank and approve a purchase and assumption transaction under the Bank Merger Act the first time that the Bank's bid to acquire a failed institution is accepted by the FDIC. Final approval and authorization for the proposed Bank to open will not be granted until all pre-opening requirements are met. In addition, in connection with final approval and the Bank's commencing business, the OCC will require the Bank to enter a written Operating Agreement that will require the Bank to submit a Comprehensive Business Plan acceptable to the OCC. The Plan must detail the proposed business and operations of the Bank, and the Bank must obtain the OCC's written supervisory non-objection to the Plan. After receiving the OCC's non-objection, the Bank must implement and adhere to the Plan. Any significant deviation from the Plan will require prior notice to the OCC and receipt of a separate, written OCC non-objection to the changes.

Officers and Directors

The OCC poses no objection to the following persons serving as executive officers, directors, and/or organizers as proposed in the application:

<u>Name</u>	<u>Title</u>
Tom C. Nichols	Organizer, Director, Chairman of the Board, Chief Executive Officer
Don E. Cosby	Organizer, Director, President, Chief Operating Officer
Rick J. Calhoon	Organizer, Director
Gary J. Fletcher	Organizer, Director
H. Gil Moutray	Organizer, Director
Mindy B. Hegi	Chief Financial Officer

Prior to opening, the Bank must obtain the OCC's prior written determination of no objection for any additional organizers, executive officers or directors appointed or elected before the person assumes the position. For a two-year period after the Bank commences business, the Bank must file an *Interagency Biographical and Financial Report* with the OCC and receive a letter of no objection from the OCC prior to any new executive officer or director assuming such position.

Organizing Steps and Requirements

The “Charters” booklet in the *Comptroller’s Licensing Manual* provides guidance for organizing your bank. The booklet is located at the OCC’s web site:

<http://www.occ.treas.gov/corpbook/group4/public/pdf/charters.pdf>.

As detailed in the booklet, you may establish the corporate existence of and begin organizing the Bank as soon as you adopt and forward Articles of Association and the Organization Certificate to Senior Licensing Analyst Robert Norris in this office. As a “body corporate,” or legal entity, you may begin taking those steps necessary to obtain final approval. The Bank may not begin the business of banking until it fulfills all requirements for a bank in organization and the OCC grants final approval.

Enclosed are standard requirements and minimum policies and procedures for new national banks. In addition to the standard requirements for all new national banks, the Bank must also follow the requirements required by the conditions below and set out in Appendix A. The Bank must meet these requirements before the OCC will issue final approval and the Bank is allowed to commence business. The Board of Directors also must ensure that the applicable policies and procedures are established and adopted before the Bank begins operation.

Under separate cover, the OCC will send to you an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the *Comptroller’s Licensing Manual*, which is available only in electronic form at our web site:

<http://www.occ.treas.gov/corpapps/corpapplic.htm>.

Conditions

This approval is subject to the following conditions:

- A. During its organization, the Bank shall follow the requirements specified in Appendix A regarding the Bank’s first acquisition (the “Initial Acquisition”).
- B. If the Bank receives final OCC approval for an Initial Acquisition, the Bank shall enter into, and thereafter implement and adhere to, a written agreement with the OCC, in a form substantially similar to the agreement attached as Appendix B, within one (1) business day after receiving final OCC approval, commencing business, and consummating the Initial Acquisition.

These conditions of approval are conditions “imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request” within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

Conclusion

This conditional preliminary approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. Our approval is based on the representations made in the application, other submissions, and other information available to the OCC as of this date. The OCC may modify, suspend, or rescind this approval if a material change in the information on which the OCC relied occurs prior to final approval. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If the Bank has not commenced business and consummated an Initial Acquisition within eighteen (18) months from the conditional preliminary approval date, this approval expires, unless extended by the OCC.

Any information required to be submitted to the OCC by the Organizing Conditions in Appendix A and any questions concerning this conditional preliminary approval should be directed to Senior Licensing Analyst Robert Norris at 202-874-5060. You should include the application control number on any correspondence related to this filing.

Sincerely,

signed

Lawrence E. Beard
Deputy Comptroller, Licensing

Attachment:

Appendix A: Organizing Conditions
Appendix B: Draft Operating Agreement

Enclosures:

Standard Requirements
Minimum Policies and Procedures
Survey Letter

APPENDIX A

Organizing Conditions for Carlile Bank, National Association (In Organization)

Updating Preliminary Information

- (1) In the application, the organizers provided information that the OCC relied on in determining to proceed in granting preliminary approval. This information included:
 - (a) the amount and sources of capital that would be available to the Bank;
 - (b) the proposed shareholders in the Company that would own the Bank and respective holdings of each shareholder;
 - (c) the identity, background information, and banking experience of the initial directors and senior executive officers of the Bank;
 - (d) the overall strategic plan of the organizers and Investors for the Bank; and
 - (e) a preliminary business plan outlining intended product and business lines, retail branching plans, and capital, earnings and liquidity projections.

Until the Bank completes its first acquisition, the Bank shall inform the OCC immediately of any material changes in the preliminary information included in the application, and shall update the OCC periodically (at least monthly) regarding the status of the preliminary information.

- (2) The Bank shall notify and periodically update the OCC on the status of the application with the Board of Governors of the Federal Reserve System by Carlile Bancshares, Inc., and on the status of the Bank's application with the FDIC for deposit insurance.

Initial Acquisition

(3) At the time the Bank first identifies a potential initial acquisition transaction in which the Bank would assume liabilities and acquire assets (a) from the FDIC as receiver of a failed institution, (b) as part of a transaction in which the FDIC provides assistance pursuant to 12 U.S.C. § 1823(c)(2), (c) as part of a transaction pursuant to the Bank Merger Act, 12 U.S.C. § 1828(c)(3), (4) & (6) (the "BMA"), involving the probable failure of one or more insured depository institutions, (d) as part of a transaction pursuant to the 10-day/5-day emergency provisions of the BMA, or (e) in any other manner (collectively, an "Acquisition Transaction"), the Bank shall promptly notify the OCC in writing of the contemplated initial Acquisition Transaction.

- (4) The Bank's notice to the OCC shall include an Acquisition Business Plan setting out the Bank's plans for the initial capitalization, operations, and business of the target

institution, with a particular focus on the initial period of 60 days after the acquisition. (If the Bank then succeeds in acquiring the institution, the Bank will be required subsequently to submit a comprehensive long-term business plan.) The Acquisition Business Plan at a minimum shall include the following, to the extent this information is available and known to the Bank:

- (a) the name of the potential acquired institution, and information regarding the institution's size, locations, business lines, and asset composition;
- (b) the proposed transaction, including: (i) the terms on which the FDIC is offering the failed institution (whole bank purchase and assumption, insured deposit purchase and assumption, or insured deposit transfer), (ii) any unique characteristics of the transaction, including but not limited to any loss sharing agreements between the acquirer and the FDIC, (iii) the timing of the FDIC's bid process, and (iv) the type of bid the Bank is contemplating making;
- (c) the amount and composition of the initial capital the Investors plan to have in the Bank if it succeeds in acquiring the institution, and any plans and sources for raising additional capital;
- (d) the Bank's plans for the initial operations and business of the acquired institution, with particular attention to stabilizing the institution, reversing asset quality deterioration, establishing an adequate allowance for loan losses, providing adequate management and staff, mitigating deposit run-off and otherwise improving any deterioration in liquidity, improving revenue, and controlling expenses;
- (e) the Bank's assessment of the quality of existing assets and business lines that would be acquired in the acquisition, and the Bank's plans for future operations, including which business lines of the acquired institution it will continue and which it will not, what new products and services are planned, and what the projected size of each business line would be;
- (f) the Bank's assessment of management of the acquired institution, in particular identifying whether any senior executive officers will be retained, and whether additional persons will be needed to fill remaining senior officer positions;
- (g) the Bank's assessment of (i) the acquired institution's control structures, risk management function, and policies and procedures, technology infrastructure, and vendor relationships, (ii) the degree to which they would need to be developed and improved, and (iii) what the Bank would put in place to achieve that improvement;
- (h) the Bank's identification of the activities and functions that are or will be outsourced to third parties (including data processing), identification of all vendors (noting whether any are or will be affiliates of the proposed institution),

and a description of the planned oversight and management program of the various relationships; and

- (i) a *pro forma* balance sheet of the Bank as of the first day after the acquisition, and financial projections for a three-year period.

(5) After notifying the OCC of its contemplated initial Acquisition Transaction and submitting the Acquisition Business Plan, the Bank may proceed to submit a bid to the FDIC, enter a definitive agreement, submit applications, or otherwise continue its efforts for the Acquisition Transaction only after receiving the non-objection of the OCC to continue.

(6) If the Bank decides to continue with the contemplated initial Acquisition Transaction, the Bank shall immediately provide to the OCC the following items:

- (a) a copy of its bid to the FDIC, if applicable;
- (b) a copy of the Purchase and Assumption Agreement and any other documents used to effect the acquisition;
- (c) the Bank's Interagency Bank Merger Act Application for OCC approval to engage in the purchase and assumption or merger;
- (d) the Bank's Articles of Association and By-Laws to be in effect after consummation of the Acquisition Transaction;
- (e) a request for a directors' residency and/or citizenship waiver, if needed, and an Interagency Biographical and Financial Report for any proposed director or senior executive officer not previously submitted to the OCC; and
- (f) any other information or documents needed to complete the file prior to the OCC's granting final approval for the establishment of the Bank and approval for the Bank's completion of the purchase and assumption or merger.¹

(7) If the Bank wins the bid for an acquisition from the FDIC as receiver of a failed institution, if applicable, or if it otherwise becomes clear the Bank will be proceeding to complete the initial Acquisition Transaction, the Bank shall immediately notify the OCC, and update any of the items in paragraph (4) if necessary, and shall submit any necessary applications not previously submitted and request OCC approval for the Bank to commence business and approval for the purchase and assumption or merger.

¹ The OCC may allow the Bank to combine the steps set out in conditions (3), (4), (5), and (6) if the FDIC has a shortened timeframe for submitting bids or if other exigent circumstances exist. In such cases, the OCC will advise the Bank how to meet the requirements, and supply the information included, in conditions (3) through (6).

Subsequent Developments

(8) Within one (1) business day after consummation of the purchase and assumption for the initial Acquisition Transaction, the Bank shall enter into, and thereafter implement and adhere to, a written agreement with the OCC, in a form substantially similar to the agreement attached as Appendix B.

(9) If for any reason the Operating Agreement is not yet in effect after an initial Acquisition Transaction and the Bank contemplates entering a subsequent Acquisition Transaction, then the Bank shall follow the procedures above for any such subsequent Acquisition Transaction.

APPENDIX B

OPERATING AGREEMENT

By and Between
Carlile Bank, National Association
and
The Office of the Comptroller of the Currency

WHEREAS, an application was filed with the Office of the Comptroller of the Currency (the "OCC") for approval to organize a new national banking association to be called "Carlile Bank, National Association" (the "Bank");

WHEREAS, the Bank was being proposed for the purpose of assuming liabilities and purchasing assets from the Federal Deposit Insurance Corporation (the "FDIC") acting as the receiver of a depository institution;

WHEREAS, on May 29, 2009, the OCC granted conditional preliminary approval authorizing the Bank to organize as a national bank subject to, among other things, conditions addressing the Bank's organizing process and the steps it would need to follow to obtain OCC approval to make its initial acquisition of assets and assumption of liabilities and a condition that the Bank enter into this Operating Agreement;

WHEREAS, on _____, 2009, the Bank was notified by the FDIC that its bid to assume the deposits of and acquire certain assets of ____ [name of failed institution] _____ had been accepted by the FDIC;

WHEREAS, on _____, 2009, the OCC granted conditional final approval for the Bank to commence business and conditionally approved its application to acquire assets and assume liabilities, including deposits, from the FDIC as receiver, under the Bank Merger Act, 12 U.S.C. § 1828(c), which applications were subject to the condition that the Bank enter into this Operating Agreement with the OCC within one (1) business day after receiving final OCC approval, commencing business, and consummating the initial acquisition of assets and assumption of liabilities;

WHEREAS, on _____, 2009, the Bank consummated its initial acquisition of assets and assumption of liabilities (the "Initial Acquisition");

WHEREAS, the Bank and the OCC seek to ensure that the Bank will operate in a safe and sound manner, in accordance with all applicable laws, rules and regulations;

NOW THEREFORE, it is agreed between the OCC, by and through its authorized representative, and the Bank, by and through its Board of Directors ("Board"), that the Bank shall enter into and at all times operate in compliance with the articles of this Operating Agreement ("Agreement").

ARTICLE I
JURISDICTION

(1) The Bank is a national banking association chartered and examined by the OCC pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The OCC is “the appropriate Federal banking agency” regarding the bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b)

(3) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818.

(4) This Agreement shall not be construed to be a “formal written agreement” within the meaning of 12 C.F.R. § 5.3(g)(4) and 12 C.F.R. § 24.2(e)(4), unless the OCC informs the Bank otherwise.

(5) This Agreement shall not be construed to be a “written agreement, order, or capital directive” within the meaning of 12 C.F.R. § 6.4.

ARTICLE II
NO SIGNIFICANT DEVIATION

(1) Until the Comprehensive Business Plan required under Article III is accepted by the OCC and is in effect, the Bank shall not significantly deviate from the business, structure, asset composition and asset size, management, operations, policies, procedures, markets, and products of the Bank that existed immediately after consummation of the Initial Acquisition without first obtaining the OCC’s prior written determination of no supervisory objection to such significant deviation, except that the Bank may engage in a subsequent acquisition if permitted under Article IV of this Agreement.

(2) Any request to the OCC for prior written determination of no supervisory objection to a significant deviation shall include the Bank’s evaluation of its capability to identify, measure, monitor, and control the risks associated with the significant deviation, including an assessment of the adequacy of the Bank’s organizational structure, financial condition, staffing, management information systems, internal controls, and written policies and procedures.

(3) For purposes of this Agreement, the phrase “significantly deviate” and “significant deviation” shall be construed in light of the guidance provided in Appendix G (Significant Deviations After Opening) of the “Charters” booklet of the *Comptroller’s Licensing Manual* (December 2007), and shall include, but not be limited to, any significant deviation from or material change to the following:

DRAFT

- (a) The Bank's projected growth in asset size, through acquisition or otherwise. For purposes of this provision, a significant deviation in the Bank's projected growth in asset size shall be defined as a projected increase of ten percent (10%) or more in the Bank's adjusted total assets over any twelve month period, or as otherwise defined by the OCC in the OCC's sole judgment.
- (b) The Bank's projected expansion in any product, service, or activity, through acquisition or otherwise. For purposes of this provision, a significant deviation in product or service expansion shall be defined as a projected increase of fifteen percent (15%) or more, on an annualized basis, in existing products or services that individually account for greater than either five percent (5%) of the Bank's total assets or ten percent (10%) of the Bank's annual revenues (measured, in each case, as of the date of the Bank's last filed Call Report), or as otherwise defined by the OCC in the OCC's sole judgment.
- (c) Any change in the Bank's personnel or operations, including any change in operations resulting from changes in external factors, that may have a material adverse impact on the Bank's operations or financial performance.
- (4) For the avoidance of doubt, deviations in the Bank's financial performance, or infusions of capital in the Bank, shall not, by themselves, be significant deviations under this Article II.

ARTICLE III
COMPREHENSIVE BUSINESS PLAN

(1) Within forty-five (45) days after consummation of the Initial Acquisition, the Bank shall submit a written Comprehensive Business Plan to the OCC for a prior written determination of no supervisory objection. The Comprehensive Business Plan shall cover at least a three-year period, and shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, product line development, outsourcing, and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives. The Comprehensive Business Plan, at a minimum, also shall include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's present and future operating environment;
- (c) development of strategic goals and objectives to be accomplished over the short- and long-run, including the Bank's growth or expansion plans and short- and long-term merger or acquisition strategy;

DRAFT

- (d) an identification of the present and future product lines that will be utilized to accomplish the strategic goals and objectives established in paragraph (1)(c) of this Article and a discussion, to the extent applicable, of how the Bank will transition from the acquired products, services, and markets, to those that will ultimately be pursued;
- (e) an assessment of the adequacy of the Bank's internal operations, management and staffing, and policies and procedures to accomplish the goals and objectives developed under paragraph (1)(c) of this Article, and a description of the steps the Bank will take to address any inadequacies;
- (f) a management plan that identifies any proposed changes in management personnel and their responsibilities and qualifications, and assesses whether Bank management can appropriately supervise the internal operations of the Bank in light of structural and other factors, as well as the goals and objectives developed under paragraph (1)(c) of this Article;
- (g) a compensation plan that outlines the method of compensation for key officers and employees, including salary, benefits, deferred compensation, stock options or incentives, retention bonuses, and severance payments;
- (h) a financial forecast, on a monthly basis, for major balance sheet and income statement accounts, cash flow statements, specific earnings and profit goals, and desired financial ratios over the period covered by the Comprehensive Business Plan;
- (i) a capital plan that provides for the maintenance of the Bank's capital, so as to ensure compliance with Article V of this Agreement. The plan shall include (i) an assessment of the adequacy of the Bank's capital structure in relation to the acquired business lines, planned new business lines, internal and external risks, and underlying operational and financial assumptions (including projected growth), (ii) a projection of the sources and timing of additional capital to meet the Bank's current and future needs, and (iii) projections for dividends;
- (j) a liquidity and funding plan that outlines policies specifically establishing minimum levels of on-hand liquidity, the expected sources of funding and general range of amount for each source, and the Bank's maximum funding concentrations (in particular for brokered deposits),
- (k) a liquidity contingency plan that identifies alternative funding sources and strategies for their implementation;
- (l) the types and volumes of lending activities in which the Bank plans to engage and credit policies and procedures to address all aspects of credit underwriting, credit administration, and loan portfolio management for such lending activities;

- (m) a description of the Bank's intended geographic market area, the competitive factors and economic environment the Bank faces in the intended market, and how the Bank will address the convenience and needs of that market to maintain its long-term viability;
- (n) a description of the Bank's assessment areas for purposes of the Community Reinvestment Act ("CRA"), the CRA performance context for the Bank, the credit needs of the Bank's CRA assessment areas, and the Bank's programs, products, and activities that will help meet the existing or anticipated needs of its communities, including the needs of low- and moderate-income neighborhoods;
- (o) a description of the Bank's current branches and other offices and any plans to establish additional branches or other offices or to relocate any branches or the main office within the first three years;
- (p) a description of the Bank's current premises and fixed assets, including whether they are owned or leased (and if leased, a description of the terms of the lease), and any plans to acquire additional premises or fixed assets within the first three years;
- (q) an assessment of the Bank's information technology systems and a description of any proposed changes or upgrades, including whether the information technology is suitable to the types of business which the Bank has identified under paragraph (1)(c) & (d) and whether it is sufficient to protect the Bank from unauthorized tampering or access;
- (r) a list of activities and functions, including data processing, that will be outsourced to third-parties, identifying the parties, noting any affiliations, and describing the terms and conditions of the vendor agreements;
- (s) an evaluation of the adequacy of the Bank's vendor management program, including the due diligence process for selecting third-party service providers and the oversight process for monitoring them;
- (t) a review of the security program of the institution acquired, including security devices, and a description of any changes or upgrades that will be made; and
- (u) an action plan to accomplish identified strategic goals and objectives, including target dates and an identification of processes, personnel, and control systems to monitor implementation of and adherence to the Comprehensive Business Plan.

(2) Once the Bank receives the prior written determination of no supervisory objection from the OCC required by paragraph (1) of this Article, the Bank shall adopt, implement, and thereafter adhere to the Comprehensive Business Plan.

DRAFT

(3) Except as amended and supplemented as provided in Article IV, once adopted, the Bank shall not significantly deviate from the Comprehensive Business Plan without giving the OCC at least sixty (60) days prior written notice of its intent to do so, and obtaining the OCC's prior written determination of no supervisory objection to such action. The Board's request for supervisory non-objection shall include, at a minimum, an evaluation of the adequacy of the Bank's management; organizational structure; staffing; management information systems; capital adequacy; funding sources; internal controls; and written policies and procedures to identify, measure, monitor, and control the risks associated with the change. Once the Bank receives prior written determination of no supervisory objection from the OCC, the Bank shall revise the Comprehensive Business Plan to reflect the change and Bank shall implement and thereafter adhere to the revised Comprehensive Business Plan. If, after receiving supervisory non-objection from the OCC for a significant deviation from or change to its Comprehensive Business Plan, the Bank decides not to make such change, the Bank shall provide the OCC with written notice of its decision.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the Comprehensive Business Plan. The Bank shall not operate or conduct business in a manner inconsistent with the most recent Comprehensive Business Plan that has received supervisory non-objection from the OCC.

(5) The Board shall ensure that performance under the Comprehensive Business Plan is reviewed quarterly, and that the Comprehensive Business Plan is updated annually, no later than the end of the month of [ADD MONTH] each year, to cover the next three (3) year period. The Bank shall submit its updated annual Comprehensive Business Plan to the OCC within 30 days of completion for review and a written supervisory non-objection by the OCC.

ARTICLE IV **SUBSEQUENT ACQUISITIONS**

(1) After the Initial Acquisition, at the time the Bank first identifies a potential subsequent acquisition transaction in which the Bank would assume liabilities and acquire assets (a) from the FDIC as receiver of a failed institution, (b) as part of a transaction in which the FDIC provides assistance pursuant to 12 U.S.C. § 1823(c)(2), (c) as part of a transaction pursuant to the Bank Merger Act, 12 U.S.C. § 1828(c)(3), (4) & (6) (the "BMA"), involving the probable failure of one or more insured depository institutions, (d) as part of a transaction pursuant to the 10-day/5-day emergency provisions of the BMA, or (e) in any other manner (collectively, an "Acquisition Transaction"), the Bank shall promptly notify the OCC in writing of the contemplated subsequent Acquisition Transaction.

(2) The Bank's notice to the OCC shall include an Acquisition Plan setting out the Bank's plans for the acquired institution. The Acquisition Plan at a minimum shall include the following:

DRAFT

- (a) the name of the potential acquired institution, and information regarding the institution's size, locations, business lines, and asset composition;
- (b) the proposed transaction, including: (i) if applicable, the terms on which the FDIC is offering the failed institution, (ii) any unique characteristics of the transaction, including but not limited to any loss sharing agreements between the acquirer and the FDIC, (iii) the timing of the FDIC's bid process, and (iv) the type of bid the Bank is contemplating making;
- (c) how the Bank will fund the acquisition;
- (d) a *pro forma* balance sheet of the Bank as of the first day after the acquisition, and financial projections for a three-year period; and
- (e) a description of any changes in the Bank's Comprehensive Business Plan that may arise as a result of the contemplated acquisition.

(3) After notifying the OCC of its contemplated subsequent Acquisition Transaction and submitting the Acquisition Plan, the Bank may proceed to submit a bid to the FDIC, enter a definitive agreement, submit applications, or otherwise continue its efforts for the Acquisition Transaction only after receiving the supervisory non-objection of the OCC to continue.

(4) If the Bank decides to continue with the contemplated subsequent Acquisition Transaction, the Bank shall immediately provide to the OCC the following items:

- (a) a copy of its bid to the FDIC, if applicable;
- (b) a copy of the Purchase and Assumption Agreement and any other documents used to effect the acquisition;
- (c) the Bank's Interagency Bank Merger Act Application for OCC approval to engage in the purchase and assumption or merger; and
- (d) any other information or documents needed to complete the file prior to the OCC's granting approval for the Bank's completion of the purchase and assumption or merger.

(5) The OCC may allow the Bank to combine the steps set out in paragraphs (1) through (4) if the FDIC has a shortened timeframe for submitting bids or if other exigent circumstances exist. In such cases, the OCC will advise the bank how to meet the requirements, and supply the information included, in paragraphs (1) through (4).

(6) If the Bank wins the bid for an acquisition from the FDIC as receiver of a failed institution, if applicable, or if it otherwise becomes clear the Bank will be proceeding to complete the subsequent Acquisition Transaction, the Bank shall immediately notify the OCC

DRAFT

and update any of the items in paragraph (4) if necessary; and shall submit any necessary applications not previously submitted and request OCC approval for the purchase and assumption or merger.

(7) After the Bank has completed the subsequent Acquisition Transaction, the Bank shall submit to the OCC any documents, plans, projections, or other information related to the acquisition as requested by the OCC as soon as practical but no later than thirty (30) days after the OCC's request. The information requested by the OCC and submitted by the Bank shall serve to amend and supplement the Bank's existing Comprehensive Business Plan. If the Bank previously has not submitted a Comprehensive Business Plan pursuant to Article III, then the Bank shall submit a Comprehensive Business Plan, including at a minimum each of the items required by paragraph (1) of Article III, within thirty (30) days. The Bank shall request a prior written determination of no supervisory objection from the OCC to the Comprehensive Business Plan as amended and supplemented by the information submitted pursuant to this paragraph (7).

(8) If the OCC determines, in its sole judgment, that the Bank's Comprehensive Business Plan, as amended and supplemented by the information submitted pursuant to paragraph (7) of this Article, is not acceptable, then within ten (10) days of receiving written notice from the OCC of such fact, the Board shall incorporate into the Comprehensive Business Plan any language, requirements, conditions, or other changes deemed necessary by the OCC.

(9) Immediately upon receipt of a written determination of no supervisory objection, the Bank shall adopt, implement, and thereafter adhere to the Bank's Comprehensive Business Plan, as amended and supplemented by the information submitted pursuant to paragraphs (7) and (8) of this Article.

ARTICLE V **CAPITAL**

(1) The Bank at all times shall maintain Tier 1 capital at least equal to eight percent (8%) of "adjusted total assets" (as defined in 12 C.F.R. Part 3).

ARTICLE VI **CHANGES IN DIRECTORS OR SENIOR EXECUTIVE OFFICERS**

(1) For a period of two (2) years after the execution of this Agreement, the Board shall submit the following information to the OCC for a written determination of no supervisory objection prior to the appointment of any individual to a position of "senior executive officer," as defined in 12 C.F.R. § 5.51(c)(3), or the appointment of any individual to the Bank's board of directors:

- (a) the information sought in the "Changes in Directors and Senior Executive Officers" booklet of the *Comptroller's Licensing Manual* (January 2003), together with a legible fingerprint card for the proposed individual;

DRAFT

- (b) a written statement of the Board's reasons for selecting the proposed individual; and
- (c) a written description of the proposed individual's duties and responsibilities.

(2) Notwithstanding the requirements of paragraph (1) of this Article, the Bank may request that one or more individuals assume positions of senior executive officer or director on an interim basis by submitting such request, in writing, to OCC. If OCC grants the Bank's request, then the proposed individual or individuals may assume the specified position or positions on an interim basis. Thereafter, within thirty (30) days, the Bank shall submit to the OCC the information required by paragraph (1) of this Article. If the Bank fails to submit such information within thirty (30) days, then the proposed individuals shall resign their position. The OCC, in its sole judgment, may waive any or all of the submission requirements.

(3) Upon receipt of the information required by paragraph (1) of this Article, the OCC shall review such information. The requirement to submit information is based on the authority of 12 U.S.C. § 1818(b) and 12 C.F.R. § 5.20(g)(2) and does not require the Comptroller of the Currency ("Comptroller") or the OCC to complete his review and act on any such information or authority within ninety (90) days.

ARTICLE VII

CONCLUDING PROVISIONS

(1) Effective Date. This Agreement shall become effective immediately upon its execution by all parties hereto ("Effective Date").

(2) Term of Agreement. The term of this Agreement shall commence on the Effective Date and will continue unless or until (a) it is terminated in writing by the OCC, (b) the consummation of a merger, consolidation, or other business combination in which the Bank is not the resulting entity, or (c) the Bank otherwise ceases to be a national bank.

(3) Amendment, Exception, Modification or Waiver. 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 are excepted, modified, waived, or terminated in writing by the Comptroller or his duly authorized representative. The Bank may seek termination of all or any portion of this Agreement, or exceptions and waivers of all or any portion hereof, from the OCC at any time, which relief may be granted by the OCC in its sole judgment.

(4) Extensions of Time. 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 Comptroller or his duly authorized representative for good cause upon written application by the Board.

(5) Other Action. 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 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.

(6) Board Responsibility. In each instance in this Agreement in which the Board is required to act, the Board shall be obligated to take such measures within the scope of their authority necessary to accomplish such act, and, to the extent that such measures involve directions to management of the Bank, the Board shall be obligated to ensure that management of the Bank follows such directions.

(7) Controlling Agreement. To the extent that any of the provisions of this Agreement conflict with the terms found in any existing agreement between the Comptroller and the Bank, the provisions of this Agreement shall control.

(8) Agreement not a Contract. This Agreement is intended, 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 it 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.

(9) Execution in Counterparts. This Agreement may be executed in counterparts (including by facsimile or email), each of which shall be considered an original and all of which together shall constitute one and the same instrument.

(10) Notices. All notices, written submissions, or other correspondence required by, included in, or relating to this Agreement shall be in writing and shall be made by electronic mail or facsimile transmission, with a copy sent by overnight mail, to the following persons:

DRAFT

If to the OCC:

Name
Title
Office
Office of the Comptroller of the Currency
Address
City, State

with a copy to

Name
Title
Office
Office of the Comptroller of the Currency
Address
City, State

If to the Bank

Name
Title
Address
City, State
Fax:
Email:

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

Gil Barker
Deputy Comptroller
Southern District

Date

DRAFT

IN TESTIMONY WHEREOF, the undersigned, as the directors of the Bank, have hereunto set their hands on behalf of the Bank.

Tom C. Nichols

Date

Don E. Cosby

Date

Rick J. Calhoon

Date

Gary J. Fletcher

Date

H. Gil Moutray

Date