

## SUPERVISORY AGREEMENT

This Supervisory Agreement (Agreement) is made and is effective this 27<sup>th</sup> day of January, 2000 (Effective Date), by and between Heartland Bank (Bank), a stock-chartered savings association, having its main office located in Clayton, Missouri, and the Office of Thrift Supervision (OTS), an office within the United States Department of the Treasury, having its principal executive offices located at 1700 G Street, N.W., Washington, D.C., acting through its Midwest Regional Director or his/her designee (Regional Director).

**WHEREAS**, OTS is the primary federal regulator of the Bank; and

**WHEREAS**, based on the Report of Examination dated August 2, 1999 (ROE), OTS is of the opinion that the Bank has engaged in acts and practices that: (i) have resulted in violations of certain of the laws or regulations to which the Bank is subject; and (ii) are considered to be unsafe and unsound; and

**WHEREAS**, OTS is of the opinion that grounds exist for the initiation of administrative proceedings against the Bank; and

**WHEREAS**, OTS is of the view that it is appropriate to take measures intended to ensure that the Bank will: (i) comply with all applicable laws and regulations, and (ii) engage in safe and sound practices; and

**WHEREAS**, the Bank, acting through its Board of Directors (Board), and without admitting or denying any violations of laws or regulations and/or unsafe and unsound practices, wishes to cooperate with OTS and to evidence its intent to: (i) comply with all applicable laws and regulations, and (ii) engage in safe and sound practices.

**NOW THEREFORE**, in consideration of the above premises, the mutual undertakings set forth herein, the parties hereto agree as follows:

### COMPLIANCE WITH LAWS, REGULATIONS & SAFE AND SOUND PRACTICES

#### 1. Compliance with Regulations

The Bank shall take all necessary and appropriate actions to achieve compliance with the following:

- (a) Section 5(v) of the Home Owners' Loan Act (HOLA), 12 U.S.C. Section 1464(v) (regarding reports of condition);
- (b) Section 560.160 of OTS Regulations, 12 C.F.R. Section 560.160 (regarding asset classification);
- (c) Section 562.2 of OTS Regulations, 12 C.F.R. Section 562.2 (regarding regulatory reporting standards);

- (d) Section 563.161(a) of OTS Regulations, 12 C.F.R. Section 563.161(a) (regarding management and financial policies/compensation);
- (e) Section 563.170(c) of OTS Regulations, 12 C.F.R. Section 563.170(c) (regarding establishment and maintenance of records); and
- (f) Part 564 of OTS Regulations, 12 C.F.R. Part 564 (regarding required appraisals).

## CORRECTIVE PROVISIONS

### **2. Management of Subsidiary Organizations**

By February 7, 2000, the Board and the Bank's management shall develop, submit for non-objection by the Regional Director, and implement a plan for clear and effective monitoring and oversight of all of the Bank's subsidiary organizations (Plan). The Plan shall include, but not be limited to: the lines of authority and responsibility between the Bank staff and the Bank's subsidiary entities; policies and procedures applicable to all subsidiaries relating to underwriting, asset classification, accounting and investor servicing policies; and periodic internal control audits of all subsidiaries appropriate for the size, nature, and complexity of operations of each subsidiary. The Board shall monitor the Plan's effectiveness on an ongoing basis.

### **3. Business Plan**

(a) By February 7, 2000, the Board and the Bank's management shall adopt and submit for non-objection by the Regional Director a three-year business plan (Business Plan) that, at a minimum, addresses:

- (i) bringing stabilized, core operating results of the Bank and its operating subsidiaries to acceptable levels;
  - (ii) an infusion of capital that is sufficient to maintain the Bank's capital status as well-capitalized, with 5% core capital, as defined at Section 567.5(a) of the OTS Regulations, 12 C.F.R. Section 567.5(a). The Bank shall increase its core capital over a one year period by increments of 0.75% at the end of each quarter, so as to maintain an additional 3% core capital against high risk assets;
  - (iii) financial projections for three years;
  - (iv) description of all major transactions between the institution and its subordinate organizations in the upcoming three years; and
  - (v) new proposed activities in subsidiaries or any increased activity in subsidiaries.
- (b) Once the Business Plan is approved, the Board and the Bank's management shall monitor variance reports at least quarterly to assure that projections are being achieved and that the Business Plan's goals do not need revising. The Board shall submit to the Regional Director for non-objection any revised

## Business Plan.

### **4. Asset Review and Classification Policy**

- (a) By February 7, 2000, the Board shall adopt and implement a written asset review and classification policy (Policy) as provided for in Section 560.160 of the OTS Regulations, 12 C.F.R. Section 560.160, and the Federal Financial Institutions Examination Council's (FFIEC's) Uniform Retail Credit Classification and Account Management policy, dated February 10, 1999. The Policy shall require review of all Bank assets and the assets of its consolidated subsidiaries (for Thrift Financial Report (TFR) purposes, as required by Section 562.2 of the OTS Regulations, 12 C.F.R. Section 562.2) for, among other things, possible understatement of adversely classified assets, and shall require establishment of adequate valuation allowances or charge-offs, as appropriate.
- (b) The Board shall appoint an officer independent of the lending function for overall responsibility for the Policy, to assure consistency in the implementation of the Policy. Once implemented, executive management and the Board shall periodically monitor the Policy and its implementation to ensure its effectiveness.
- (c) By February 7, 2000, the Bank shall obtain an appraisal report from an independent state-certified appraiser to determine the fair value of all Tapawingo Development property in which the Bank has an interest, to ensure that the book balance of this asset does not exceed the fair value of the collateral. The appraisal shall conform at a minimum with the requirements of Section 564.4(a)-(d) of the OTS Regulations, 12 C.F.R. Section 564.4(a)-(d). Immediately upon receipt of the appraisal, the Bank shall establish adequate valuation allowances or charge-offs, as appropriate, consistent with generally accepted accounting principles and the practices of federal banking agencies.

### **5. Financial Recordkeeping and Reporting**

By February 7, 2000, the Board shall adopt policies and procedures to maintain adequate and accurate financial records in accordance with the requirements of Section 562.1 of the OTS Regulations, 12 C.F.R. Section 562.1. Such procedures shall ensure the completion and submission to the OTS of accurate TFRs, as required by Section 562.2 of the OTS Regulations, 12 C.F.R. Section 562.2.

### **6. Asset Growth**

Without the prior written approval of the Regional Director, and until the Regional Director issues a non-objection to the Bank's business plan, the Bank's growth in Total

Assets shall not exceed Total Assets as of December 31, 1999, plus the amount of net interest credited on deposit liabilities at the end of each quarter, if any.

#### **7. Changes in Directors or Executive Officers; Terms of Employment and Golden Parachute Payments**

- (a) As required by Section 32 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. Section 1831i, and Section 563, Subpart H of the OTS Regulations, 12 C.F.R. Section 563.550, et seq., the Bank shall provide to OTS at least 30 days prior written notice of any changes to its directorate or executive officer staff before the employment becomes effective.
- (b) Pursuant to OTS Regulatory Bulletin 27a, dated March 5, 1993, the Bank shall not enter into, renew, extend or revise any contractual arrangement related to compensation or benefits with any director or senior executive officer of the Bank or any subsidiary thereof, unless it first (i) provides a minimum of thirty days advance notice of a proposed transaction; and (ii) receives a written notice of non-objection from the Regional Director.
- (c) The Bank shall not make any "golden parachute payment", as that term is defined in Section 18(k) of the FDIA, 12 U.S.C. Section 1828(k), and as it may be further defined in regulations adopted by the Federal Deposit Insurance Corporation (FDIC) under that authority, unless it first (i) provides a minimum of 30 days advance notice of a proposed transaction; and (ii) receives a written notice of non-objection from the Regional Director.
- (d) Pursuant to OTS Regulatory Bulletin 27a, dated March 5, 1993, and to Section 563.161(b) of the OTS Regulations, 12 C.F.R. Section 563.161(b), the Bank shall not increase the compensation of, or pay a performance bonus to, any management official, senior executive officer, or director of the Bank or any subsidiary thereof, unless it first (i) provides a minimum of thirty days advance notice of a proposed transaction; and (ii) receives a written notice of non-objection from the Regional Director.

#### **8. Restrictions on Transactions With Affiliates**

Without first providing a minimum of 30 days advance notice of the proposed payment, and receiving a written notice of non-objection from the Regional Director with regard thereto, the Bank shall not engage in any transaction beyond existing contractual agreements and renewals of those agreements with any affiliate (including, but not limited to, service corporations and operating subsidiaries), except for transactions: (a) that comply with all applicable statutory and regulatory requirements; and (b) where the consideration paid or received is less than \$100,000.00 per transaction.

## **9. Third Party Contracts; TB 50 Review**

The Bank shall not enter into any third party contracts outside the normal course of business pursuant to OTS Thrift Bulletin 50, dated November 19, 1991, unless it first provides a minimum of ten days advance notice of a proposed transaction; and receives a written notice of non-objection from the Regional Director.

## **10. Capital Distributions**

The Bank shall not make any capital distribution, as that term is defined in Section 563.134(a)(1) of the OTS Regulations, 12 C.F.R. Section 563.134(a)(1), unless it first provides a minimum of 30 days advance notice of a proposed capital distribution; and receives a written notice of non-objection from the Regional Director.

## **MISCELLANEOUS**

### **11. Director Responsibility**

Notwithstanding the requirements of this Agreement that the Board submit various matters to the Regional Director for the purpose of receiving his approval, non-objection or notice of acceptability, such regulatory oversight does not derogate or supplant each individual member's continuing fiduciary duty. The Board shall have the ultimate responsibility for overseeing the safe and sound operation of the Bank at all times, including compliance with the determinations of the Regional Director as required by this Agreement.

### **12. Compliance with Agreement**

- (a) The Board and officers of the Bank shall take immediate action to cause the Bank to comply with the terms of this Agreement, and shall take all actions necessary or appropriate thereafter to cause the Bank to continue to carry out the provisions of this Agreement.
- (b) The Board, on a quarterly basis, shall adopt a board resolution (Compliance Resolution) formally resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding calendar quarter, the Bank has complied with each provision of this Agreement currently in effect, except as otherwise stated. The Compliance Resolution shall specify in detail how, if at all, full compliance was found not to exist; and identify all notices of exemption or non-objection issued by the Regional Director that were outstanding as of the date of its adoption.
- (c) The minutes of the meeting of the Board shall set forth the following information with respect to the adoption of each Compliance Resolution: (i)

the identity of each director voting in favor of its adoption; and (ii) the identity of each director voting in opposition to its adoption or abstaining from voting thereon, setting forth each such director's reasoning for opposing or abstaining.

- (d) No later than the 25th calendar day of the month following the end of a calendar quarter, beginning with the end of the first calendar quarter following the Effective Date, the Bank shall provide to the Regional Director a certified true copy of the Compliance Resolution[s] adopted at the Board meeting in such calendar quarter. The Board, by virtue of the Bank's submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution, except as provided below. In the event that one or more Directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the Bank.

### **13. Definitions**

- (a) All 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, FDIA, or OTS Memoranda. Any such technical words or terms used in this Directive 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.
- (b) For purposes of this Agreement, the term "high risk assets" means those assets reported as line items SC32, SC323, SC326, SC330, SC340, SC345, and SC265 on the Bank's TFRs.
- (c) For purposes of this Agreement, the term "net interest credited on deposit liabilities" means the amount of interest and dividends reported on line item CF430 on the Bank's TFRs.

### **14. Successor Statutes, Regulations, Guidance, Amendments**

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 and references to successor provisions as they become applicable.

## **15. Notices**

Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Directive to be made upon, given or furnished to, delivered to, or filed with OTS or the Bank shall be in writing and mailed, first class or overnight courier, or means of electronic transmission, or physically delivered, and addressed as follows:

<b>OTS:</b> Midwest Regional Office 122 W. John Carpenter Fwy. Suite 600 Irving, TX 75039 (972) 281-2000 - Main Number (973) 281-2001 - Main Facsimile	<b>Bank:</b>	Heartland Bank 212 South Central Avenue, # 200 Clayton, MO 63105-3570 (314) 512-8500 - Main Number (314) 512-8501 - Main Facsimile
---	--------------	--

## **16. Duration, Termination or Suspension of Agreement**

- (a) This Agreement shall: (i) become effective upon its execution by OTS, through its authorized representative whose signature appears below; and (ii) remain in effect until terminated, modified or suspended in writing by OTS, acting through its Director or the Regional Director (including any authorized designee thereof).
- (b) The Regional Director in his or her sole discretion, may, by written notice, suspend any or all provisions of this Agreement.

## **17. Time Limits**

Time limitations for compliance with the terms of this Agreement run from the Effective Date, unless otherwise noted.

## **18. Effect of Headings**

The Section headings herein are for convenience only and shall not affect the construction hereof.

## **19. Separability Clause**

In case any provision in this Agreement is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his/her sole discretion determines otherwise.

**20. No Violations of Law, Rule, Regulation or Policy Statement Authorized; OTS Not Restricted**

Nothing in this Agreement shall be construed as: (i) allowing the Bank to violate any law, rule, regulation, or policy statement to which it is subject; or (ii) restricting OTS from taking such action(s) that are appropriate in fulfilling the responsibilities placed upon it by law, including, without limitation, any type of supervisory, enforcement or resolution action that OTS determines to be appropriate.

**21. Successors in Interest/Benefit**

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. Nothing in this Agreement, express or implied, shall give to any person or entity, other than the parties hereto and the Federal Deposit Insurance Corporation and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Agreement.

**22. Signature of Directors**

Each Director signing this Agreement attests, by such act, that she or he, as the case may be, voted in favor of the resolution, in the form attached to this Agreement, authorizing the execution of this Agreement by the Bank.

**23. Integration Clause; Impact On Other Enforcement Documents**

- (a) This Agreement represents the final written agreement of the parties with respect to the subject matter hereof and constitutes the sole agreement of the parties as of the Effective Date, with respect to such subject matter.
- (b) The November 8, 1999 Directive, issued by the Midwest Regional Director to the Board of Directors of the Bank is hereby terminated as of the Effective Date of this Agreement and is superseded by the terms of this Agreement.

**24. Enforceability of Agreement**

The Bank represents and warrants that this Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Bank. The Bank acknowledges that this Agreement is a "written agreement" entered into with OTS within the meaning of Section 8 of the FDIA, 12 U.S.C. Section 1818.

IN WITNESS WHEREOF, OTS, acting by and through the Regional Director, and the Bank, in accordance with a duly adopted resolution of its Board (copy attached hereto), hereby execute this Agreement as of the Effective Date.

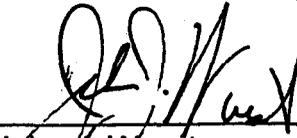
OFFICE OF THRIFT SUPERVISION

HEARTLAND BANK

By:

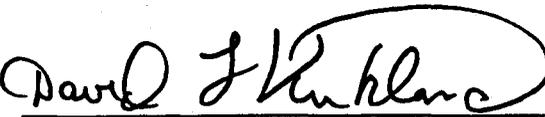
By:

  
\_\_\_\_\_  
Frederick R. Casteel  
Midwest Regional Director

  
\_\_\_\_\_  
John J. Wuest  
President

DIRECTORS OF THE BANK

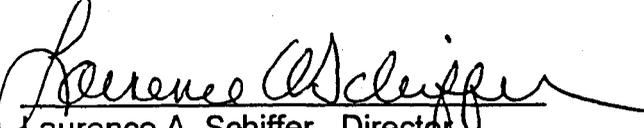
  
\_\_\_\_\_  
Sarah Bakewell, Director

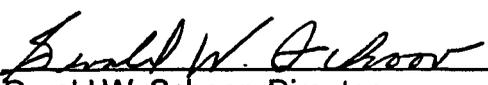
  
\_\_\_\_\_  
Davis L. Kirkland, Director

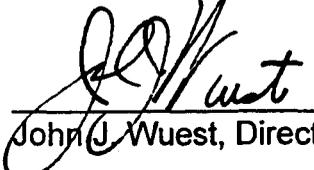
  
\_\_\_\_\_  
Andrew S. Love, Jr., Director

\_\_\_\_\_  
Thomas O. Parks, Director

\_\_\_\_\_  
George M. Rosen, Director

  
\_\_\_\_\_  
Laurence A. Schiffer, Director

  
\_\_\_\_\_  
Gerald W. Schoor, Director

  
\_\_\_\_\_  
John J. Wuest, Director

IN WITNESS WHEREOF, OTS, acting by and through the Regional Director, and the Bank, in accordance with a duly adopted resolution of its Board (copy attached hereto), hereby execute this Agreement as of the Effective Date.

OFFICE OF THRIFT SUPERVISION

HEARTLAND BANK

By:

By:

*FR Casteel*

Frederick R. Casteel  
Midwest Regional Director

John J. Wuest  
President

DIRECTORS OF THE BANK

*Sarah Bakewell*

Sarah Bakewell, Director

Davis L. Kirkland, Director

Andrew S. Love, Jr., Director

Thomas O. Parks, Director

*George M. Rosen*

George M. Rosen, Director

Laurence A. Schiffer, Director

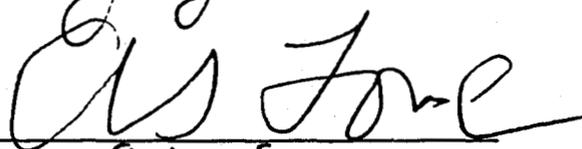
*Gerald W. Schoor*

Gerald W. Schoor, Director

John J. Wuest, Director



IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of the Bank on this 27<sup>th</sup> day of July, 2000.



Name: Andrew S. Love

Title: Secretary

(SEAL)

**CERTIFIED COPY OF  
RESOLUTION OF BOARD OF DIRECTORS**

I, the undersigned, being the duly appointed and qualified Secretary of Heartland Bank, Clay, Missouri, (Bank) hereby certify as follows:

1. A duly called meeting of the Board of Directors of the Bank was held on January 27, 2000;
2. At said meeting a quorum was present and voting throughout;
3. The following is a true copy of resolutions duly adopted by the Bank's Board of Directors, which resolutions have not been rescinded or modified and are now in full force and effect:

**WHEREAS**, the Board of Directors of the Bank wishes to cooperate with OTS, and to demonstrate that said Board and the Bank intend to: (1) comply with all applicable laws and regulations and (2) engage in safe and sound practices; and

**WHEREAS** the Directors of the Bank have read and considered the proposed Supervisory Agreement ("Agreement") which shall be attached to the minutes of this meeting; and

**WHEREAS** after due consideration, the Directors of the Bank have determined to cause the Bank to enter into the proposed Agreement which is in the best interest of the Bank;

**NOW THEREFORE, BE IT RESOLVED**, that the Bank be and it hereby is authorized to enter into the Agreement in the form attached to the minutes of the meeting,

**FURTHER RESOLVED**, that the execution and delivery of, and performance of all of the provisions of the Agreement be, and they hereby are, authorized and approved,

**FURTHER RESOLVED**, that the Directors and Officers of the Bank be, and they hereby are, authorized and directed to execute and deliver the Agreement and to take all steps necessary or appropriate to implement the terms of the Agreement and to cause the Bank to comply in all respects with the terms of the Agreement.

4. All members of the Board of Directors were present and voted at the meeting (except \_\_\_\_\_) and all members of the Board of Directors (except \_\_\_\_\_) voted in favor of the resolution;