FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of **HOWARD R. PALMER,** **individually, and as an institution-affiliated party of** **AMERICAN BANK CENTER** **DICKINSON, NORTH DAKOTA** **(Insured State Nonmember Bank)**	**NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION** **AND** **NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING** **FDIC-09-205e** **FDIC-09-206k**

The Federal Deposit Insurance Corporation ("FDIC"), has determined that Howard R. Palmer ("Respondent"), individually, and as an institution-affiliated party of American Bank Center, Dickinson, North Dakota ("Bank"), has, directly or indirectly, recklessly engaged or participated in unsafe or unsound practices and breaches of his fiduciary duty in connection with the Bank; that as a result of the unsafe or unsound practices and breaches of fiduciary duty, the Bank has suffered financial loss, risk of loss, or other damage, and the interests of the Bank's depositors have been prejudiced; that the unsafe or unsound practices and breaches of fiduciary duty were part of a pattern of misconduct; and that such unsafe or unsound practices and breaches of fiduciary duty demonstrate Respondent's personal dishonesty and his willful and continuing disregard for the safety and soundness of the Bank.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether appropriate orders should be issued against the Respondent pursuant to the provisions of section 8(e) and 8(i)(2) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(e) & 1818(i)(2), prohibiting Respondent from further participation in the conduct of the affairs of any insured

depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. §1818(e)(7)(A), without the prior written approval of the FDIC and such other "appropriate Federal financial institutions regulatory agency," as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D), and ordering him to pay a civil money penalty.

The FDIC hereby issues this:

(a) NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e) and the FDIC's Rules of Practice and Procedure ("FDIC's Rules"), 12 C.F.R. Part 308; and

(b) NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY"), pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2), and the FDIC's Rules, 12 C.F.R. Part 308.

In support thereof, the FDIC alleges as follows.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

DEFINITIONS AND JURISDICTION

1. The Bank is, and at all times pertinent to these proceedings has been, a corporation existing and doing business under the laws of the State of North Dakota, having its principal place of business at Dickinson, North Dakota.

2. The Bank is, and at all times pertinent to these proceedings has been, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III, and the laws of the State of North Dakota.

3. At all times pertinent to these proceedings, Respondent was a vice president, loan officer and, accordingly, an "institution-affiliated party" of the Bank, as that term is defined in

section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of section 8(e)(7), 8(i) and 8(j) of the Act, 12 U.S.C. § 1818(e)(7), 1818(i) and 1818(j).

4. At all times pertinent, the FDIC was the "appropriate federal banking agency," as that term is defined in section 3(q) of the Act, 12 U.S.C. § 1813(q), and has jurisdiction over the Respondent and the subject matter of this proceeding.

RESPONDENT'S MISCONDUCT

5. (a) In 2005 and 2006, while Respondent was a Bank vice president and loan officer, he and business-owner Louis Burkhardsmeier ("Burkhardsmeier") engaged in a scheme to make a series of four loans and disburse the proceeds for Burkhardsmeier's use and for the benefit of Burkhardsmeier's related companies and clients. The related companies include Glass Blast Media ("GBM") and Burkhardsmeier Financing Solutions ("BFS").

(b) In October 2005, Louis Burkhardsmeier was Chief Financial Officer of GBM. In 2006, Burkhardsmeier owned and operated BFS, which provided financial advice and found loans for its clients with credit problems such as past due debt. Some of BFS's clients were in the trucking industry.

(c) Burkhardsmeier, GBM, BFS and many of BFS's clients were financially stressed at the time of the scheme and, in some cases, needed the financing to pay off loans at other institutions and to other creditors. The net effect of the four loans was to transfer credit problems of GBM, BFS and BFS's clients from other lenders to the Bank.

6. To avoid Bank management's close scrutiny and possible disapproval of the four loans, Respondent attempted to conceal that the four loans were made to pay down past due loans and operating expenses. Respondent falsely stated in Bank records and to Bank officers that the proceeds of each loan would be used by the borrower to purchase trucks or trailers.

7. Respondent knew that no trucks or trailers would be purchased with the proceeds of the four loans, and therefore, no purchase money security interest would be obtained. In addition, Respondent obtained only a security interest in other trucks and trailers that were pledged through Burkhardsmeier's connections and did not perfect the security interest in any collateral, including the trucks and trailers pledged. As a result, Respondent left the Bank in a collateral position subordinate to any other lender with a prior or perfected interest in that collateral.

8. As a result of Respondent's misconduct, the Bank incurred losses on all four loans, totaling $269,485.

The Wiest Loan

9. On October 27, 2005, while he was a Bank vice president and loan officer, Respondent caused the Bank to make a $250,000 loan ("Wiest Loan") to Dr. David Wiest ("Dr. Wiest"), a GBM shareholder.

10. Respondent created and placed in the Bank's Wiest Loan credit file a "Loan Worksheet," which falsely stated that the loan proceeds were to be used for the purchase of trucks. Under the "Collateral" heading, Respondent listed "Trucks - Exhibit A, owned by Glass Blast Media, Inc." GBM was listed as a guarantor of the loan.

11. On or about October 28, 2005, Respondent presented the Wiest Loan to the Bank's loan committee for approval. In his briefing to the loan committee, Respondent falsely represented that Dr. Wiest operated a trucking business hauling sugar beets and potatoes, that Dr. Wiest owned several trucks, and that Dr. Wiest would use the loan proceeds to purchase trucks to increase his hauling of beets and potatoes.

12. Notwithstanding Respondent's statements on the note and in the Bank credit file records, Respondent advanced the proceeds of the Wiest Loan by Bank cashier's check dated November 1, 2005, to GBM's account at American Bank Center First, Bismarck, North Dakota ("Bank Center First"), for the benefit of GBM, BFS and a BFS client, as follows:

(a) $61,000 covered the overdraft on GBM's account at Bank Center First; and

(b) the remaining funds were transferred by Burkhardsmeier for the benefit of BFS and a BFS client.

13. Respondent made the Wiest Loan with insufficient collateral protection for the amount and type of the loan. Because Respondent did not ensure that the loan proceeds were used to purchase trucks as stated in the loan file, no purchase money security interest was obtained. In addition, Respondent did not perfect a security interest in the trucks purportedly pledged on the loan, which left the Bank subordinate to other lenders that had a prior or perfected security interest.

14. When Dr. Wiest discovered that none of the Wiest Loan proceeds were used to purchase trucks as agreed under the terms of the loan, he refused to repay the loan.

15. The Bank brought a collection action against Dr. Wiest in State Court. In its decision on the action, the State Court determined that Dr. Wiest was entitled to have the $250,000 loan rescinded because Respondent fraudulently induced Dr. Wiest into signing the note through false and misleading statements, and Dr. Wiest did not receive the loan proceeds or the promised collateral for the obligation. The Bank suffered a loss of $184,149 on the Wiest Loan as a result of Respondent's misconduct.

The BFS Loans

16. While he was a Bank vice president and loan officer, Respondent caused the Bank to make a series of three loans to BFS, dated March 1, 2006, March 17, 2006, and March 22, 2006. The amounts of the three BFS loans were $34,050, $20,050, and $35,050, respectively.

17. Respondent falsely stated on the notes and in credit file records for each BFS loan that the proceeds would be used by BFS for the purchase of semi-trailers. However, in coordination with Burkhardsmeier, he caused and permitted the BFS loan proceeds to be used to pay BFS's outstanding expenses and past due debt of BFS's clients.

18. Respondent made the BFS loans based upon Burkhardsmeier's request, emailed to Respondent on February 28, 2006, the day before the first BFS loan was made. Burkhardsmeier stated that the loan proceeds were to be used to make loan payments and pay expenses for a number of specified BFS clients. Burkhardsmeier's email also indicated that BFS and BFS's clients had a pressing need for funds. For example, with respect to one of BFS's clients, Burkhardsmeier stated that they "need $29,000 (was $20,000) to stop the foreclosure on their equipment (they have to bring everything current to stop the proceedings)."

19. Two hours later, in his email response to Burkhardsmeier, Respondent agreed to the proposal, stating, among other things, that he would "start on $35,000 to Burchardsmeier (sic) Financial Solutions for the CCI itemization below … and work on the others as (sic) the same time … financials would be a good thing."

20. Respondent made the BFS loans with insufficient collateral protection. Respondent knew that semi-trailers would not be purchased with the loan proceeds, so no purchase money security interest would be obtained. In addition, although Respondent obtained security agreements for trucks and trailers provided as security on the loans, he did not perfect a

security interest in the collateral pledged. Finally, the trucks and trailers pledged as collateral were already subject to prior liens.

21. Respondent knew when the BFS loans were made that BFS had financial problems and its financial condition did not support the BFS loans. Burkhardsmeier provided Respondent with a handwritten and unaudited financial statement for BFS, dated March 3, 2006, which reported a net worth of $484,000. The financial statement was significantly overstated. Among other things, it included as assets annual contracts with GBM and BFS client J&S Express, valued at $140,000 and $150,000, respectively. Respondent knew that the contract values were overstated, particularly because of the financial problems of GBM and J&S Express. In addition, BFS's financial statement reflected little cash or other liquid assets.

22. Burkhardsmeier also provided Respondent his handwritten and unaudited personal financial statement, dated March 3, 2006, which reported his net worth to be $665,000. Respondent knew that Burkhardsmeier's personal financial statement overstated his net worth. Among other things, Burkhardsmeier listed BFS as his primary asset, valued at $484,000. For the reasons alleged above, the BFS valuation was significantly overstated.

23. Respondent knew that Burkhardsmeier provided little support for repayment of the BFS loans. Among other things, Burkhardsmeier's credit report showed that at the time Respondent made the loan, Burkhardsmeier had a low credit score due to, among other things, serious delinquency, numerous delinquencies, collection filed, and high credit balances.

24. Respondent did not disclose the credit weaknesses of BFS and Burkhardsmeier, who was a guarantor of some of the loans. By concealing the true purpose of the loans and the credit problems associated with them, Respondent deprived Bank management of the opportunity to delay the approval of the loans to address and resolve the problems therein, or

deny them altogether. In either case, it is likely that if Bank management had delayed or denied the loans, BFS and BFS's clients could not have timely obtained the funds they needed to pay back other debts and expenses.

25. By reason of Respondent's misconduct regarding the BFS loans, the Bank incurred loss. As of December 1, 2006, the Bank had charged off approximately $85,337 on all three loans.

The First BFS Loan

26. Respondent, as Bank vice president and loan officer, made the first loan to BFS on March 1, 2006, for $34,050 ("First BFS Loan"). Respondent falsely stated on the note that the loan purpose was to "purchase semi trailers (sic)." Respondent also stated in Bank credit file records, including the Loan Worksheet, that the First BFS Loan was secured by truck trailers and was guaranteed by Burkhardsmeier.

27. On or about March 1, 2006, contrary to his statements on the note and in the loan file, Respondent directed Bank staff to disburse part of the First BFS Loan proceeds for the benefit of Custom Cruiser as follows:

(a) by a $4,652.60 cashier's check payable to Bank Center First, with BFS as remitter. The check was deposited at Bank Center First and distributed as payments on three past due loans to Custom Cruiser. Respondent knew about the loans to Custom Cruiser, as he made all three of them in March 2005 while a loan officer at Bank Center First;

(b) by a $2,198.58 cashier's check payable to Bank Center First, with BFS as remitter. The check was applied as a payment on Custom Cruiser's Visa credit card account at Bank Center First;

(c) by a $1,961.10 cashier's check payable to North Dakota Development Fund ("NDDF"), with BFS as remitter. The check was applied on a past due NDDF loan to Custom Cruiser;

(d) by a $1,077.60 cashier's check payable to Lake Agassiz Regional Development ("LARD"), with BFS as remitter. The $1,077.60 was applied as two payments on a past due LARD loan to Custom Cruiser; and

(e) by two cashier's checks for $2,281.02 and $2,115.25, payable to North Dakota Department of Transportation. The proceeds were applied as payments for Custom Cruiser taxes and fees.

28. On or about March 1, 2006, Respondent directed Bank staff to disburse additional proceeds of the First BFS Loan by four cashier's checks, with BFS as remitter. The checks, for $250, $200, $200, and $183.33, were made out to individuals as apparent payments from BFS.

29. On or about March 1, 2006, Respondent directed Bank staff to disburse the remaining $18,880.52 of the loan proceeds by wire transfer to a BFS deposit account at Choice Financial Group, Grafton, North Dakota. Respondent advised Bank staff that this was BFS's "payroll account." Of the $18,880.52, $11,900 was transferred to a BFS client's deposit account and the remainder was taken by BFS in cash.

30. Respondent knew when he made the First BFS Loan that BFS would not purchase semi-trailers with the loan proceeds and, therefore, no purchase money security interest would be obtained.

31. Respondent and Burkhardsmeier executed a security agreement that pledged a 1996 truck and a 1995 truck trailer as collateral on the First BFS Loan. However, Respondent did not perfect a security interest in the truck or the trailer. In addition, Respondent also knew

that the 1996 truck provided little, if any, collateral value because the truck was already pledged as collateral on an August 17, 2005, Bank loan to BFS client J&S Express. Respondent made the 2005 loan to J&S Express while he was a loan officer at Bank Center First.

32. Respondent did not have financial statements for BFS or Burkhardsmeier at the time the First BFS Loan was made. He did not receive their financial information until March 3, 2006, after much of the loan proceeds were disbursed.

33. By reason of Respondent's misconduct regarding the First BFS Loan, the Bank incurred loss. As of December 21, 2006, less than a year after the loan was made, the Bank had charged off $32,683.38 on the loan.

The Second BFS Loan

34. Respondent, as Bank vice president and loan officer, made the second loan to BFS on March 17, 2006, for $20,050 ("Second BFS Loan"). Respondent falsely stated on the note that the loan purpose was to "purchase semi trailers (sic)." Respondent also stated in Bank credit file records, including the Loan Worksheet, that the loan was secured by two Peterbilt trucks and two trailers, and was guaranteed by Burkhardsmeier.

35. On or about March 17, 2006, Respondent directed Bank staff to distribute the Second BFS Loan proceeds by cashier's check and wire transfer for the benefit of BFS and J&S Express, as follows:

(a) by a $6,104.24 cashier's check payable to Dakota Certified Development Corporation ("Dakota CDC"), with J&S Express as the remitter. Bank staff forwarded a copy of the cashier's check to Burkhardsmeier. The check was applied to a J&S Express loan balance, of which Respondent was aware because he arranged for Dakota CDC to make the loan to J&S Express in June 2005, while he was a loan officer at Bank Center First; and

(b) by a $13,895.76 wire transfer to BFS's "payroll account" at Choice Financial Group. From the $13,895.76, BFS took at least $9,000 in cash and transferred $2,600 to J&S Express.

36. Respondent knew when he made the Second BFS Loan that BFS would not purchase semi-trailers with the loan proceeds and, therefore, no purchase money security interest would be obtained.

37. Respondent obtained a security agreement for the trucks and trailers pledged by the owners of River Oaks Express, a BFS client, as collateral for the Second BFS Loan. However, he did not perfect a security interest in the trucks and trailers.

38. By reason of Respondent's misconduct regarding the Second BFS Loan, the Bank incurred loss. As of December 21, 2006, only 9 months after the loan was made, the Bank charged off $19,186.19.

The Third BFS Loan

39. Respondent, as Bank vice president and loan officer, made the third loan to BFS on March 22, 2006, for $35,050 ("Third BFS Loan"). Respondent falsely stated on the note that the loan purpose was to "purchase 3 refrigerated semi trailers (sic)." Respondent also stated in Bank file records, including the Loan Worksheet, that the loan was secured by three refrigerated trailers and was guaranteed by Burkhardsmeier.

40. On or about March 22, 2006, Respondent directed Bank staff to distribute the proceeds of the Third BFS Loan as follows:

(a) $29,000 of the Third BFS Loan proceeds was disbursed to Bremer Bank/Hansen Lease & Rental, with Johnson Trucking, a BFS client, as remitter. Respondent knew from his email correspondence with Burkhardsmeier that Johnson Trucking was past due

on payments to Hansen Lease & Rental for the purchase of trailers and that the payments had to be made by March 22, 2006, to stop foreclosure on the loan. To ensure that the $29,000 payment was timely received, Respondent directed Bank staff to take the check to Bremer Bank in Grand Forks, North Dakota, where it was deposited on March 22, 2006; and

(b) the remaining $6,000 was disbursed to BFS by wire transfer into BFS's payroll account at Choice Financial Group.

41. Respondent knew when he made the Third BFS Loan that BFS would not purchase semi-trailers with the loan proceeds and, therefore, no purchase money security interest would be obtained.

42. Respondent obtained a security agreement for the trailers that were pledged by Johnson Trucking as collateral for the Third BFS Loan. However, Respondent did not perfect a security interest in the trailers.

43. By reason of Respondent's misconduct regarding the Third BFS Loan, the Bank incurred loss. As of December 21, 2006, the Bank had charged off $33,467.50 on the loan.

UNSAFE OR UNSOUND PRACTICES AND BREACHES OF FIDUCIARY DUTY

44. By reason of Respondent's foregoing acts, omissions, and practices, Respondent has, directly or indirectly, recklessly engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank.

45. By reason of Respondent's unsafe or unsound practices and breaches of fiduciary duty, which were part of a pattern of misconduct, the Bank suffered more than a minimal financial loss and the interests of the Bank's depositors have been or could be prejudiced.

46. Respondent's unsafe or unsound practices and breaches of fiduciary duty involve personal dishonesty and demonstrate a willful and continuing disregard for the safety and soundness of the Bank.

ORDER TO PAY

By reason of Respondent's reckless unsafe or unsound practices and breaches of fiduciary duty set forth in this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

After taking into account the appropriateness of the penalty with respect to the size of the Respondent's financial resources; the gravity of Respondent's unsafe or unsound practices and breaches of fiduciary duty; Respondent's history of previous violations, unsafe or unsound practices, or breaches of fiduciary duty, if any; and such other matters as justice requires, it is ORDERED, that by reason of Respondent's reckless unsafe or unsound practices and breaches of fiduciary duty, a civil money penalty in the amount of $25,000 be, and hereby is, assessed against Respondent.

IT IS FURTHER ORDERED that the effective date of this ORDER TO PAY be, and hereby is, stayed until 20 days after the date of service of this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, during which time Respondent may file an answer and request a hearing pursuant to section 8(i)(2)(H) of the Act, 12 U.S.C. § 1818(i)(2)(H), and section 308.19 of the FDIC Rules, 12 C.F.R. § 308.19. If Respondent timely requests a hearing with respect to this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, it shall be held at the same time and in the same place as the hearing with respect to the NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION. **If Respondent fails to file a request for a**

hearing within 20 days of service of this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, the penalty assessed against him pursuant to this ORDER TO PAY will be final and unappealable and shall be paid within 60 days after the date of service of this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY.

NOTICE OF HEARING

Notice is hereby given that a hearing shall commence 60 days from the date of service of this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION upon Respondent, or on such other date as may be set by the Administrative Law Judge assigned to hear this matter, at Minot, North Dakota, or at such other place as the parties to this proceeding and the Administrative Law Judge may agree, for the purpose of taking evidence on the charges herein specified, in order to determine whether an order should be issued to prohibit Respondent from further participation in the conduct of the affairs of any insured depository institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the "appropriate Federal financial institutions regulatory agency," as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D), and if requested, for the further purpose of determining whether a civil money penalty should be assessed against the Respondent pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2).

The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC's Rules, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication ("OFIA") pursuant to 5 U.S.C. § 3105. The Administrative Law Judge will determine the exact time and precise location of the hearing.

Respondent is hereby directed to file an answer to the NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION within 20 days from the date of service and, if Respondent desires a hearing with respect to the NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, to file an answer and request for hearing with respect thereto, as provided by section 308.19 of the FDIC Rules, 12 C.F.R. § 308.19.

An original and one copy of the answer, any such request for a hearing, and all other papers filed in this proceeding must be filed in writing with OFIA at: Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500, pursuant to 12 C.F.R. § 308.10. The Respondent is encouraged to file any answer and request for a hearing electronically with OFIA at ofia@fdic.gov.

Copies of all documents required to be filed shall also be served upon Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W. (F-1058), Washington, D.C. 20429-9990; A. T. Dill, III, Assistant General Counsel, Legal Division, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W. (MB-3020), Washington, D.C. 20429-9990; and Arturo A. Vera-Rojas, Regional Counsel, Federal Deposit Insurance Corporation, 2345 Grand Boulevard, Suite 1200, Kansas City, Missouri 64108.

Pursuant to delegated authority.

Dated this 21st day of July, 2010.

/s/____________________________
Serena L. Owens
Associate Director
Division of Supervision and
Consumer Protection