

## Sample Subordinated Note Included in Tier 2 Capital

THIS OBLIGATION IS NOT A DEPOSIT AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION. THIS OBLIGATION IS SUBORDINATED TO THE CLAIMS OF DEPOSITORS AND GENERAL CREDITORS, IS UNSECURED, AND IS INELIGIBLE AS COLLATERAL FOR A LOAN BY [BANK NAME].

\$ \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ [Bank Name] \_\_\_\_\_, a national banking association (“Bank”), promises to pay to the order of \_\_\_\_\_ [Purchaser] \_\_\_\_\_ (“Purchaser”), at the Purchaser’s offices in \_\_\_\_\_ [Address] \_\_\_\_\_, the principal amount of \$ \_\_\_\_\_, together with the interest on the part of the principal amount from time to time remaining unpaid from this date until such principal is paid at the rate of \_\_\_\_\_ [Percent] \_\_\_\_\_ annually.

The entire unpaid principal of this note and any accrued interest then unpaid shall be due and payable on or before \_\_\_\_\_ [Date not less than five years from date of execution] \_\_\_\_\_. The interest on this note shall be due and payable \_\_\_\_\_ [Payment Period] \_\_\_\_\_ as it accrues on \_\_\_\_\_ [Accrual Period] \_\_\_\_\_ until this note is paid in full, commencing on the first such date following the date of this note. Once any scheduled payments of principal begin, all scheduled payments shall be made at least annually and the amount repaid in each year shall be no less than in the prior year. The Bank shall have the right and privilege of prepaying all or any part of this note at any time without notice or penalty from the Purchaser. However, the Bank is prohibited from prepaying this subordinated debt note (including, where applicable, payment pursuant to an acceleration clause, redemption prior to maturity, repurchase, or exercising a call option) without prior approval from the Office of the Comptroller of the Currency (“OCC”). The holder of this note may not accelerate payment of principal or interest on this note except in the event of receivership, insolvency, liquidation, or similar proceeding of the Bank. All payments on this note shall be applied first to accrued interest and the balance, if any, to principal.

**Subordination.** This obligation is unsecured and shall be subordinate and junior in right of payment to the Bank’s obligations to its depositors and general creditors, except those obligations ranking on parity with, or subordinated to, this note.

In the event of any insolvency, receivership, conservatorship, liquidation, reorganization, readjustment of debt, marshaling of assets and liabilities, winding up of, or similar proceedings relating to the Bank, whether voluntary or involuntary, all obligations owed to creditors,

including both secured and unsecured or general creditors shall be entitled to be paid in full before any payment shall be made on this subordinated debt note. After such payments have been made, the holder of this note, together with any obligations of the Bank ranking on parity with this note, shall be entitled to be paid from the remaining assets of the Bank all outstanding payments due under this note. Any such payment or other distribution on this note, whether in cash, property, or otherwise, shall be made on account of any capital stock or any obligations of the Bank ranking junior to this note.

In the event that the Bank enters into a receivership, insolvency, liquidation, or similar proceeding, the holder of this subordinated debt note may be fully subordinated to the interests held by the U.S. government.

Nothing herein shall impair the obligation of the Bank, which is absolute and unconditional, to pay the principal of, and any premium and interest on, this note according to its terms.

**Office of the Comptroller of the Currency Regulatory Authority.** Notwithstanding any other provisions of this note, including specifically those set forth in the sections relating to subordination, events of default and covenants of the Bank, it is expressly understood and agreed that, in the event the Bank is considered “undercapitalized” as defined under applicable law, and fails to satisfactorily implement a required capital restoration plan, the Bank may be subject to restrictions and requirements applicable to “significantly undercapitalized” institutions, as defined in applicable law, or if the Bank is considered “significantly undercapitalized,” the OCC has the legal authority to require the Bank to sell shares in the Bank, enter into a merger or consolidation, or be acquired by a depository institution or a depository institution holding company. This authority supersedes and voids any default that may have occurred resulting from such OCC action. In addition, if the Bank is considered “critically undercapitalized” as defined under applicable law, the Bank will be prohibited from making principal or interest payments on the subordinated debt note without prior OCC approval.

If the Bank is placed in receivership by the OCC, any receiver or conservator of the Bank appointed by the OCC may, in the performance of its legal duties, transfer or direct the transfer of the obligations of this note to any entity selected by the receiver or conservator. Any entity selected in this manner shall expressly assume the obligation to pay the unpaid principal, and interest and premium, if any, on this note and perform all covenants and conditions in a timely manner. The completion of such transfer and assumption shall serve to supersede and void any default, acceleration or subordination which may have occurred, or which may occur due or related to such transaction, plan, transfer or assumption, pursuant to the provisions of this note, and shall serve to return the holder to the same position, other than for substitution of the original obligor, it would have occupied had no default, acceleration or subordination occurred. Notwithstanding the foregoing, however, any interest and principal previously due, other than by reason of acceleration, and not paid, shall be deemed to be immediately due and payable as of the date of such transfer and assumption, together with the interest from its original due date at the rate provided for herein, unless the holder of the note has made an agreement to the contrary.

The Bank must obtain prior OCC approval to prepay this subordinated debt note, including through a redemption prior to maturity, repurchase, or exercising a call option. In addition, if

callable by its terms, the Bank may call the instrument only after a minimum of five years following issuance, except that the instrument may be called sooner than five years upon the occurrence of an event that would preclude the instrument from being included in tier 2 capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. § 80a-1, et seq.).

[IF BANK HAS DISCRETION TO SUSPEND INTEREST PAYMENTS WITHOUT TRIGGERING EVENT OF DEFAULT. SEE 12 C.F.R. § 3.11 AND PARAGRAPH (4) OF THE DEFINITION OF “DISTRIBUTION” IN 12 C.F.R. § 3.2.

Consistent with the requirements for the capital conservation buffer at 12 C.F.R. § 3.11, the Bank may be prohibited from making a distribution under this note, or creating an obligation to make such a distribution, if such distribution, in the aggregate, would exceed the maximum payout amount, unless the Bank receives prior OCC approval.]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_