



1 normal operations and to eventually return 100% of depositors' funds. Two depositors particularly  
2 interested in the process were the Retirement Fund and MPLA. At the time the Bank's operations  
3 were suspended, the Retirement Fund had more \$5.57 million in deposits and MPLA had more than  
4 \$8.1 million. The two parties intervened in the current matter. As part of the receivership process,  
5 the Court has worked to create a plan for returning all deposits to these agencies, while protecting  
6 the long-term prospects for the Bank's recovery. The Court is now prepared to approve final  
7 depository plans for each.

8 MARIANAS PUBLIC LANDS AUTHORITY

9 As a result of extensive negotiation, the Bank and MPLA have agreed on a plan to return  
10 MPLA's funds over a number of years. The plan calls for an immediate payment to MPLA of  
11 \$164,622.86, representing 1% interest on the original principal, and principal reductions of \$50,000  
12 monthly. This \$50,000 monthly represents the maximum that the Bank believes it can safely pay  
13 out to MPLA and Retirement Fund combined. Therefore, the agreement calls for the monthly  
14 principal payment to go down to \$29,500 if the Court approves a similar payment schedule with the  
15 Retirement Fund.<sup>1</sup> The agreement also required additional principal reductions yearly based on the  
16 cash flows provided by operating activities. These yearly payments would also be split between  
17 MPLA and the Retirement Fund. To provide security for MPLA's deposits, in the event that the  
18 Bank ultimately fails, the agreement also gives MPLA an interest in treasury bills and loans held by  
19 the Bank.

20 The Court finds this agreement acceptable. It provides for return of MPLA's deposits within  
21 a reasonable period and provides adequate security in case of Bank failure. Therefore, the Court will  
22 approve the agreement with two modifications. First, certain of the loans offered as security are  
23 described as "CDA guaranteed," (CDA is the Commonwealth Development Authority), when they  
24 are not so guaranteed. The Court has no objection to inclusion of non-CDA-guaranteed loans as  
25 security, but the agreement must clearly delineate which loans are guaranteed and which are not.

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27 <sup>1</sup> \$29,500 is 59% of the \$50,000 principal reduction that the Bank believes it can safely pay out. Retirement  
28 Fund and MPLA funds held at the Bank total \$13.67 million. MPLA funds account for 59% of this \$13.67 million.

1 Second, the Court believes this document is of public interest and should be made publicly available.  
2 Therefore, the term “CONFIDENTIAL” must be removed from the title page and Section 4(g) of  
3 the agreement, which is a confidentiality provision, must be stricken. The Court will happily sign  
4 an agreement with these changes incorporated at the parties earliest convenience. Once signed, the  
5 Court will see that it is attached to this order and made publicly available.

#### 6 NORTHERN MARIANA ISLANDS RETIREMENT FUND

7 Unfortunately, the Retirement Fund and the Bank have not been able to reach an amicable  
8 agreement. Instead they have each submitted proposed orders, which the Court will use in crafting  
9 an order to govern them both. The proposed order submitted by the Bank mirrors the agreement  
10 already reached with MPLA. The proposed order submitted by the Retirement Fund calls for a  
11 higher interest rate on principal, increased monthly payouts, and termination of the order at the end  
12 of the receivership. For the reasons stated below, the Court has concluded that the Bank’s proposed  
13 order is superior in most respects.

14 The Court understands the Retirement Fund’s concerns with the rate of payment proposed  
15 by the Bank. If the only payments made are the principal reductions of \$20,500 monthly, it will take  
16 22 years to return all of the Fund’s principal. Under the Fund’s proposal, it would only take seven  
17 years. However, the Bank’s plan calls for additional yearly principal reductions as the Bank  
18 becomes more liquid. If liquidity improves, this could significantly cut the time to full repayment.

19 Realistically, substantial improvements in liquidity will occur only when the Bank is able to  
20 generate income by making new loans. Overly high payouts to the Fund now would make it difficult  
21 for the Bank to make new loans, ultimately harming all depositors, including the Fund. The Court  
22 has concluded that the payment scheme presented by the Bank offers the best chance for both the  
23 full return of principal to depositors within a reasonable time and for the continued viability of the  
24 Bank.

25 The Court is also aware of the Retirement Fund’s concerns about the security offered on its  
26 deposits. It was the Retirement Fund that first notified the Court that some of the loans in the  
27 collateral package were not actually “CDA guaranteed,” as described. However, the Court believes  
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1 that the collateral offered as security by the Bank is sufficient to protect the interests of the  
2 Retirement Fund without unduly harming the interests of other depositors, including MPLA.

3 Finally, the Court has noted that the Retirement Fund has objected to the portion of the  
4 Bank's proposal that allows the plan to survive the termination of the receivership. The Fund argues  
5 that termination of the receivership would mean the Bank is healthy and access to deposits would  
6 no longer need to be restricted. This seems sensible enough, but the Court foresees a period in  
7 which the work of the receiver is largely done, principal reduction plans for depositors concluded,  
8 loan operations resumed, etc., but the Bank's liquidity is still insufficient to survive unfettered  
9 account access. In such a scenario, the Court might dispense with a Receiver, whose only duty  
10 would be to monitor existing agreements and orders, and save the Bank the cost of Receivership.  
11 The Court believes that a provision in the depository order addressing that possibility is wise.

12 Therefore, the Court will adopt the proposal of the Bank as an order of this Court, with one  
13 major modification: the removal of provisions making the order confidential.<sup>2</sup> In addition, a number  
14 of wording changes and deletions have been made to reflect that the document is an order of the  
15 Court and not a bilateral agreement. The complete document appears below as Attachment A.

#### 16 CONCLUSION

17 The Court hereby APPROVES the proposed agreement of MPLA and the Bank, with the  
18 required amendments described above, and will endorse a properly amended agreement at the  
19 parties' earliest convenience.

20 The Court hereby ORDERS that the Bank and the Retirement Fund abide by the terms of the  
21 "Northern Mariana Islands Retirement Fund Depository Order," which is attached below.

22 SIGNED this 25th day of August 2004

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25 /s/  
26 JUAN T. LIZAMA, Associate Judge

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28 <sup>2</sup> This is in keeping with the Court's required amendments of the Bank-MPLA agreement. Unlike that agreement, the Bank's proposed order already contained a corrected collateral description.



1 a formal Regulatory Agreement was executed and filed with the Court by the Commonwealth  
2 Secretary of Commerce on June 26, 2003.

3 WHEREAS, the Depositor is a government agency that currently has on deposit with the  
4 Bank various assets.

5 WHEREAS, the Bank is a vital part of the Commonwealth's economy, and it is in the best  
6 interest of the community and Depositor that the Bank be reorganized and rehabilitated.

7 Accordingly, and pursuant to the Rehabilitation Plan and the Regulatory Agreement  
8 approved by the Court, the Depositor is ordered to have limitations placed on its ability to withdraw  
9 the assets and funds it currently has on deposit with the Bank, as hereinafter set forth.

10 ORDER

11 NOW, THEREFORE, as part of the reorganization and rehabilitation of the Bank, the parties  
12 are bound as follows:

13 1. Initial Payout -- The principal balance as of April 30, 2002 for Depositor was  
14 \$5,570,396.79. This balance will be placed in an interest-bearing account, earning interest  
15 at the banks prevailing savings account interest rate. Interest on the original balance of  
16 \$5,570,396.79 will be recalculated at the rate of 1.00% from April 30, 2002 through May 31,  
17 2004. This amount is equal to \$117,355.37, and shall be paid to Depositor within 10  
18 business days of the date of this order. The new account with a principal balance of  
19 \$5,570,396.79 shall earn interest at the banks prevailing savings account rate beginning June  
20 1, 2004 and shall be payable monthly. In addition the Bank of Saipan will immediately begin  
21 making principal reductions of \$20,500.00 monthly.

22 2. Security and Collateral:

23 The deposits are hereby secured and collateralized by all of the following:

24 A. \$695,000.00 United States Treasury Bill(s) in the name of Depositor which shall  
25 not be withdrawn, in whole or part, except for interest earned, for a period of one  
26 year from the effective date of this order;

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B. The following Commonwealth Development Authority (CDA) guaranteed loans:

Loan Number	Loan Amount	Guarantee Amount
20033238, 20033256	\$4,134,057.53	\$3,721,551.30
20037400	1,948,493.35	1,753,644.01
20037687	208,047.35	104,023.67
200023613	135,214.89	121,693.40
TOTAL	\$6,426,813.12	\$5,700,912.38

C. The Bank shall promptly inform Depositor when and if any CDA guaranteed loan pledged as collateral herein is refinanced, compromised, settled or otherwise restructured or litigated. Notwithstanding such refinancing, compromising, settling, restructuring or litigation, Depositor's security shall not be diminished without prior approval of the Depositor.

D. In the event the Bank calls a CDA guaranteed loan and receives proceeds of the guarantee from CDA, such pro-rata share of proceeds shall be paid to Depositor.

E. The Bank must maintain a minimum of 133% of net loans outstanding to cover Depositor's deposits at all times until said deposits are fully paid to Depositor.

3. Additional Principal Reduction:

A. The Bank shall pay 20.5% of the cash flows provided from the operating activities which will be realized in 2005, and each fiscal year thereafter, as per the audited financial statements, within 60 days of each fiscal year end, and shall be deducted from the excess of cash and investments net of collateral plus marketable loans over net retail outstanding loans.

B. Definitions and Assumptions:

1. Net Retail Deposit Outstanding is Total Deposits Outstanding minus Shareholders' Subordinated Deposits and Government Agencies' Deposits.

2. Cash and Liquid Investments Net of Collateral is Ending Balance of Cash and Investments less Collateral with Federal Reserve Bank and Other Banks.

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3. Total Retail Deposit Base is 105 percent (70% of Net Retail Deposit Outstanding and 35% of Net Retail Deposit Outstanding) of Net Retail Deposit Outstanding.

4. Excess of 105 percent of total retail base is total cash and investments net collateral plus marketable loans less total retail base times 20.5 percent.

5. Liquidity Ratio is the ratio of cash and investments net of collateral over net retail deposit outstanding.

C. Application of the excess if 70 percent liquidity ratio is achieved:  
Beginning June 30, 2006 for every three consecutive (3) months, Cash and Investments net of Collateral equals 70 percent of the net retail deposit outstanding and readily marketable loans equal 35% of net retail deposit outstanding, the Bank will pay NMIRF the excess of total retail deposit base times 29.5 percent.

4. ADDITIONAL TERMS:

A. Renegotiations of the terms of this Order shall be held if requested by either party, but modification of the Order is subject to the consent of the Court.

B. A representative from Depositor shall be allowed, on a confidential basis, full access to all Bank records, including but not limited to, financial statements, loans, etc., upon written request. The Bank shall provide Depositor, on a confidential basis, with copies of all reports required by the Regulatory Agreement to be prepared, including reports provided to the Banking Commissioner, on a monthly basis.

C. A representative from Depositor shall be permitted to attend Asset/Liability Committee meetings and Loan Committee meetings as an observer.

D. The Bank shall not pay any officer or employee bonus higher than that that is normal and customary in the local banking community.

E. The Bank shall not pay any shareholder dividends until Depositor's deposits are fully released to Depositor.

F. Majority shareholder restricted deposits of approximately \$1.3 million shall not be withdrawn until Depositor's deposits are paid in full, with the exception of



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deposits converted to equity in the sum of no more than \$280,000.00 which results in no cash being withdrawn from the Bank.

G. Should the Bank reach an agreement or be ordered by the court to provide a more beneficial agreement to MPLA, then the Court shall amend this order to include the more beneficial terms, at Depositor’s request. Depositor shall be the sole judge of what “a more beneficial agreement” or “more beneficial terms” are.

H. A Certified Public Accountant with bank auditing experience shall audit the bank starting in year 2004 and thereafter. The Bank shall provide the annual audit report within 60 days of the closing of the Bank’s fiscal year.

I. It is understood and agreed that this order shall survive the termination of the Receivership, and that the court shall retain jurisdiction over the enforcement of this order. In the event of a breach of the terms of this order by either party, the court shall adjudicate the issues; determine responsibility, liabilities and remedies, upon written motion, without the necessity of filing a separate and new action in the Superior Court.

J. This order shall inure to the benefit of and be binding upon the heirs, personal representatives, agents, affiliates, employees, officers, officials, successors, predecessors, assigns, and all other persons, firms, corporations or other entities in privity or joint liability with the parties hereto.

K. Should legal action be necessary to enforce any of the terms and conditions of this Order, the prevailing party shall pay to the other party reasonable attorney’s fees and costs to be fixed by the court.

L. If any provision of this order is declared illegal or unenforceable by any court of competent jurisdiction in any action or proceeding instituted by, on behalf, or by agreement, and such provision cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Order in full

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force and effect. If necessary and on petition from either party, the Court will create a replacement provision.