

**STATE OF NEBRASKA**  
**Department of Banking & Finance**

IN THE MATTER OF: )  
)  
Heartland Cash Advance, LLC, )  
d/b/a Heartland Cash Advance, )  
310 East 4<sup>th</sup> Street, )  
North Platte, Lincoln County, Nebraska; )  
)  
Heartland Cash Advance, LLC, )  
d/b/a Heartland Cash Advance, )  
315 Box Butte Avenue, )  
Alliance, Box Butte County, Nebraska; )  
)  
Heartland Cash Advance, LLC, )  
d/b/a Heartland Cash Advance, )  
314 Omaha Avenue, )  
Norfolk, Madison County, Nebraska; )  
)  
Heartland Cash Advance, LLC, )  
d/b/a Heartland Cash Advance, )  
3660 North 10<sup>th</sup> Street, )  
Gering, Scotts Bluff County, Nebraska )

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

CONSENT AGREEMENT

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Delayed Deposit Services Licensing Act, Neb. Rev. Stat. §§ 45-901 to 45-929 (Reissue 2004; Cum. Supp. 2008) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008), the DEPARTMENT has examined the books, accounts, and records of Heartland Cash Advance, LLC, d/b/a Heartland Cash Advance, 310 East 4<sup>th</sup> Street, North Platte, Lincoln, County, Nebraska; Heartland Cash Advance, LLC, d/b/a Heartland Cash Advance, 315 Box Butte Avenue, Alliance, Box Butte County, Nebraska; Heartland Cash Advance, LLC, d/b/a Heartland Cash Advance, 314 Omaha Avenue, Norfolk, Madison County,

Nebraska; and Heartland Cash Advance, LLC, d/b/a Heartland Cash Advance, 3660 North 10<sup>th</sup> Street, Gering, Scotts Bluff County, Nebraska (“HEARTLAND”). As a result of such examinations, and being duly advised and informed in the matter, the Director and HEARTLAND enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

### **FINDINGS OF FACT**

1. HEARTLAND holds delayed deposit services business licenses under the Act. License #2023 for Lincoln County was originally issued on May 1, 2007. License #2027 for Box Butte County was originally issued on February 23, 2007. License #2026 for Madison County was originally issued on February 23, 2007. License #2022 for Scotts Bluff County was originally issued on February 23, 2007. The licenses have been renewed annually on May 1<sup>st</sup> since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).

2. On July 25, 2007 and October 20, 2008, the DEPARTMENT commenced examinations of HEARTLAND’s North Platte, Lincoln County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

3. The July 25, 2007 Report of Examination of the North Platte, Lincoln County, Nebraska location (“Lincoln County 2007 Report”) was forwarded to HEARTLAND on October 16, 2007. The October 20, 2008 Report of Examination of this office (“Lincoln County 2008 Report”) was forwarded to HEARTLAND on December 5, 2008. The Reports noted a number of violations of the Act. HEARTLAND submitted responses received by the DEPARTMENT on November 15, 2007, for the Lincoln County 2007 Report; and December 22, 2008 and June 10, 2009, for the Lincoln County 2008 Report.

4. On May 22, 2007, the DEPARTMENT commenced an examination of HEARTLAND's Alliance, Box Butte County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

5. The May 22, 2007 Report of Examination of the Alliance, Box Butte County, Nebraska location ("Box Butte County 2007 Report") was forwarded to HEARTLAND on July 9, 2007. The Report noted a number of violations of the Act. HEARTLAND submitted a response received by the DEPARTMENT on August 17, 2007.

6. On April 11, 2007 and February 8, 2008, the DEPARTMENT commenced examinations of HEARTLAND's Norfolk, Madison County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

7. The April 11, 2007 Report of Examination of the Norfolk, Madison County, Nebraska location ("Madison County 2007 Report") was forwarded to HEARTLAND on May 21, 2007. The February 8, 2008 Report of Examination of this location ("Madison County 2008 Report") was forwarded to HEARTLAND on July 22, 2008. The Reports noted a number of violations of the Act. HEARTLAND submitted responses received by the DEPARTMENT on August 20, 2007 and October 17, 2007, for the Madison County 2007 Report; and December 29, 2008, for the Madison County 2008 Report.

8. On May 22, 2007, the DEPARTMENT commenced an examination of HEARTLAND's Gering, Scotts Bluff County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

9. The May 22, 2007 Report of Examination of the Gering, Scotts Bluff County, Nebraska location ("Scotts Bluff County 2007 Report") was forwarded to HEARTLAND on August 8, 2007. The Report noted a number of violations of the Act. HEARTLAND submitted a response received by the DEPARTMENT on September 8, 2008.

10. References in this Consent Agreement to customers of HEARTLAND will be by way of initials, in order to protect the privacy of such customers. HEARTLAND knows or should know the identity of these customers. If HEARTLAND is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

11. The DEPARTMENT has reviewed the responses submitted by HEARTLAND and has taken them into consideration in determining the appropriate actions to be taken in this matter.

12. The Box Butte County 2007 Report noted that HEARTLAND provided the examiner with a report that contained one hundred fifty-three (153) records that did not pertain to the licensee.

13. HEARTLAND's providing a report to the examiner that contained one hundred fifty-three (153) records that did not pertain to the licensee represents one hundred fifty-three (153) violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

14. The Lincoln County 2007 Report was not responded to completely. HEARTLAND's response to the Madison County 2008 Report was submitted four (4) months after the DEPARTMENT's requested response date.

15. HEARTLAND's failure to completely respond to a Report of Examination and responding four (4) months late represents two (2) separate violations of Neb. Rev. Stat. § 45-921(5) (Reissue 2004).

16. The Box Butte County 2007 Report and the Scotts Bluff County 2007 Report noted that the licenses were not posted.

17. HEARTLAND's failure to post its license in two (2) instances represents two (2) separate violations of Neb. Rev. Stat. § 45-910(1) (Cum. Supp. 2008).

18. The Scotts Bluff County 2007 Report noted three (3) instances where HEARTLAND failed to maintain customer records for RB, JN, and SP. The Lincoln County 2008 Report noted two (2) instances where records for CA were not properly maintained. The Madison County 2007 Report noted eighteen (18) instances where customer records were not properly maintained. The Madison County 2008 Report noted one (1) instance where a copy of a check was not maintained for customer RT. The Lincoln County 2007 Report noted eight (8) instances for customers KB, DB, RC, KC, AE, SG, MP, and SR where copies of checks were not maintained. The Scotts Bluff County 2007 Report noted three (3) instances for customers JN (2) and VS where copies of checks were not maintained.

19. HEARTLAND's failure to maintain customer records in twenty-three (23) instances, and HEARTLAND's failure to maintain copies of customer checks in twelve (12) instances represents thirty-five (35) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

20. The Box Butte County 2007 Report noted four (4) instances where the delayed deposit services records for JF (2), EJ, and TV were not kept separate and apart from records, books, and accounts of another business.

21. HEARTLAND's failure to maintain the records, books, and accounts of the delayed deposit services business separate and apart from the records, books, and accounts of another business in four (4) instances represents four (4) separate violations of Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008).

22. The Scotts Bluff County 2007 Report noted three (3) instances for customers RA (2) and FY where the non-sufficient funds (“NSF”) fee was not disclosed on the customer contracts. The Madison County 2007 Report noted that the NSF fees were not disclosed on any contracts for approximately four (4) months.

23. HEARTLAND’s failure to disclose NSF fees on its contracts in three (3) instances in its Scotts Bluff County 2007 Report and for four (4) months in its Madison County office represents numerous violations of Neb. Rev. Stat. § 45-917(1)(c) (Cum. Supp. 2008).

24. The Lincoln County 2007 Report noted thirteen (13) instances where HEARTLAND charged a fee in excess of \$15.00 per \$100.00 advanced.

25. HEARTLAND’s charging in excess of \$15.00 per \$100.00 advance in thirteen (13) instances represents thirteen (13) separate violations of Neb. Rev. Stat. § 45-918 (Reissue 2004).

26. The Lincoln County 2007 Report noted one (1) instance where HEARTLAND held checks for customer PJ with an aggregate face value greater than \$500.00. The Scotts Bluff County 2007 Report noted one (1) instance where HEARTLAND held checks for customer JN with an aggregate face value greater than \$500.00.

27. HEARTLAND’s holding of checks for a single customer with an aggregate face value greater than \$500.00 in two (2) instances represents two (2) separate violations of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

28. The Lincoln County 2007 Report noted one (1) instance where a check for customer BS was held longer than the statutorily allowed time. The Lincoln County 2008 Report noted two (2) instances where checks for customers JB and LN were held longer than the statutorily allowed time. The Scotts Bluff County 2007 Report noted

fourteen (14) instances where checks for customers were held longer than the statutorily allowed time.

29. HEARTLAND's holding of checks for longer than the statutorily allowed time in seventeen (17) instances represents seventeen (17) separate violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

30. The Scotts Bluff County 2007 Report noted four (4) instances where HEARTLAND failed to maintain Same Day Transaction Verification Forms ("SDTVF(s)") for RA, RB (2), and DE. The Madison County 2008 Report noted two (2) instances where HEARTLAND failed to maintain SDTVFs for JM and JG.

31. HEARTLAND's failure to maintain SDTVFs in six (6) instances represents six (6) separate violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

32. The Madison County 2008 Report noted fifty-six (56) instances where HEARTLAND failed to obtain a completed SDTVF. The Lincoln County 2008 Report noted three (3) instances where HEARTLAND failed to obtain completed SDTVFs for NA, PJ, and RB. The Scotts Bluff County 2007 Report noted twelve (12) instances where HEARTLAND failed to obtain completed SDTVFs.

33. HEARTLAND's failure to obtain completed SDTVFs in seventy-one (71) instances represents seventy-one (71) separate violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

34. The DEPARTMENT could conclude that the actions of HEARTLAND warrant the commencement of administrative proceedings to determine whether it should impose an administrative fine in an amount up to five thousand dollars per violation, plus investigation costs, pursuant to Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008).

35. The DEPARTMENT incurred a minimum of five thousand dollars in investigation costs in this matter.

### **CONCLUSIONS OF LAW**

1. Neb. Rev. Stat. § 45-908 (Reissue 2004) provides that in order to issue a delayed deposit services business license, the Director must determine that the character and general fitness of the applicant and its officers, directors, and shareholders are such as to warrant a belief that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.

2. Neb. Rev. Stat. § 45-910(1) (Cum. Supp. 2008) provides that a license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee's place of business.

3. Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) provides that a licensee shall, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proofs of compliance required by Section 45-919.

4. Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008) provides that the licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business if the books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business.

5. Neb. Rev. Stat. § 45-917(1)(c) (Cum. Supp. 2008) provides that every licensee shall, at the time any delayed deposit services transaction is made, give to the maker a



notice disclosing any penalty not to exceed fifteen dollars which the licensee will charge if the check is not negotiable on the date agreed upon.

6. Neb. Rev. Stat. § 45-918 (Reissue 2004) provides that no licensee may charge a fee in excess of fifteen dollars per one hundred dollars advanced.

7. Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008) provides that no licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars.

8. Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008) provides that no licensee shall hold or agree to hold a check for more than thirty-four days.

9. Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) provides that no licensee shall enter into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the DEPARTMENT that completion of the prior delayed deposit transaction has occurred.

10. Neb. Rev. Stat. § 45-921(5) (Reissue 2004) provides that upon receipt by a licensee of a notice of investigation or inquiry request for information from the DEPARTMENT, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

11. Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008) provides that if the Director finds, after notice and opportunity for hearing, that any person has violated the Act, the Director may order such person to pay an administrative fine of not more than five thousand dollars for each separate violation and the costs of an investigation.

12. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that HEARTLAND has violated the Act, and that an administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008).

13. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

14. It is in the best interest of HEARTLAND, and it is in the best interest of the public, for HEARTLAND and the DEPARTMENT to resolve the issues included herein.

#### **CONSENT AGREEMENT**

The DEPARTMENT and HEARTLAND agree as follows:

Stipulations: In connection with this Consent Agreement, HEARTLAND and the Director stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters raised by the DEPARTMENT's July 25, 2007 and October 20, 2008 examinations of HEARTLAND's North Platte, Lincoln County location; the May 22, 2007 examination of HEARTLAND's Alliance, Box Butte County location; the April 11, 2007 and February 8, 2008 examinations of HEARTLAND's Norfolk, Madison County location; and the May 22, 2007 examination of HEARTLAND's Gering, Scotts Bluff County location. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.

3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

HEARTLAND further represents as follows:

1. HEARTLAND is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.

2. HEARTLAND is acting free from any duress or coercion of any kind or nature.

3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS, THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of five thousand dollars (\$5,000.00) for placing one hundred fifty-three (153) records on the report to the examiner that did not pertain to the licensee at its Box Butte County location in violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

2. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of two thousand dollars (\$2,000.00) for failing to completely respond to the Lincoln County 2007 Report in violation of Neb. Rev. Stat. § 45-921(5) (Reissue 2004).

3. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of one thousand dollars (\$1,000.00) for failing to timely respond to the DEPARTMENT's request for response of the Madison County 2008 Report in violation of Neb. Rev. Stat. § 45-921(5) (Reissue 2004).

4. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of one thousand five hundred dollars (\$1,500.00) for failing to post its license in the Scotts Bluff County and Box Butte County locations in violation of Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).

5. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of one hundred dollars (\$100.00) for each of the twenty-three (23) instances it failed to maintain customer records at its Scotts Bluff County, Lincoln County, and Madison County locations in violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

6. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of one hundred dollars (\$100.00) for each of the twelve (12) instances it failed to maintain copies of customer checks at its Madison County, Lincoln County, and Scotts Bluff County locations in violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

7. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of fifty dollars (\$50.00) for each of the four (4) instances it did not maintain the records, accounts, and books of the delayed deposit services business separate and apart from the records, books, and accounts of another business in violation of Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008).

8. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of five thousand dollars (\$5,000.00) for failing to disclose the NSF fee for four (4) months at its Madison County location and in three (3) instances at its Scotts Bluff County location in violation of Neb. Rev. Stat. § 45-917(1)(c) (Cum. Supp. 2008).

9. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of five thousand dollars (\$5,000.00) for charging excess fees for advances in thirteen (13) instances at its Lincoln County location in violation of Neb. Rev. Stat. § 45-918 (Reissue 2004).

10. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of one hundred dollars (\$100.00) for each of the two (2) instances it held checks from a single maker with an aggregate face value greater than \$500.00 at its Lincoln County and Scotts Bluff County locations in violation of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

11. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of one hundred dollars (\$100.00) for each of the seventeen (17) instances it held a check longer than the statutorily allowed time at its Lincoln County and Scotts Bluff County locations in violation of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

12. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of one hundred dollars (\$100.00) for each of the six (6) instances it failed to maintain SDTVFs for its customers at its Scotts Bluff County and Madison County locations in violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

13. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay a fine of three thousand dollars (\$3,000.00) for failing to obtain completed SDTVFs for its customers in seventy-one (71) instances at its Madison County, Lincoln County, and Scotts Bluff County locations in violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

14. Within ten (10) days after the effective date of this Consent Agreement, HEARTLAND shall pay the DEPARTMENT's investigation costs in the total amount of five thousand dollars (\$5,000.00).

15. The total amount of the fine, twenty-eight thousand seven hundred dollars (\$28,700.00), plus the total amount of investigation costs, five thousand dollars (\$5,000.00), shall be payable in one check or money order in the amount of thirty-three thousand seven hundred dollars (\$33,700.00) to the DEPARTMENT.

16. In the event HEARTLAND fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding HEARTLAND as it deems necessary and appropriate in the public interest.

17. If, at any time, the DEPARTMENT determines HEARTLAND has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

18. The effective date of this Consent Agreement will be the date of the Director's signature.

DATED this 8 day of MARCH, 2010.

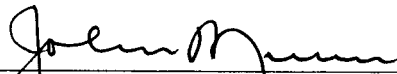
**Heartland Cash Advance LLC  
d/b/a Heartland Cash Advance**

By:  \_\_\_\_\_  
Stacy Mack, Manager of Stores

315 Box Butte Avenue  
Alliance, Nebraska 69301

DATED this 10<sup>th</sup> day of March, 2010.

**STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE**

By:   
\_\_\_\_\_  
John Munn, Director  
Commerce Court, Suite 400  
1230 "O" Street  
Lincoln, Nebraska 68508  
(402) 471-2171