

#2002-62

**AGREEMENT BY AND BETWEEN
FIRST NATIONAL BANK OF MEXIA
MEXIA, TEXAS
AND
THE COMPTROLLER OF THE CURRENCY**

First National Bank of Mexia, Mexia, Texas (Bank) and the Comptroller of the Currency of the United States of America (Comptroller) wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and, toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules and regulations.

The Comptroller, through his National Bank Examiner, has examined the Bank, and his findings are contained in the Report of Examination for the examination that commenced on April 29, 2002 (ROE).

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (Board), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

ARTICLE I JURISDICTION

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Agreement shall be construed to be a “formal written agreement” within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). *See*, 12 U.S.C. § 1831i.

(4) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller (ADC) pursuant to this Agreement shall be forwarded to:

Donald S. Smith
Assistant Deputy Comptroller
Dallas South Field Office
500 North Akard Street, Suite 1600
Dallas, Texas 75201-3342

ARTICLE II COMPLIANCE COMMITTEE

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least five (5) directors, of which no more than two (2) shall be employees of the Bank or any of its affiliates [as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)], or a family member of any such person.

(2) Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the ADC. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Agreement.

(3) The Compliance Committee shall meet at least monthly.

(4) Within thirty (30) days of the appointment of the Committee and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken to comply with each Article of this Agreement; and
- (b) the results of those actions.

The Board shall promptly forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the ADC.

ARTICLE III MANAGEMENT AND BOARD SUPERVISION STUDY

(1) Within ninety (90) days the Board shall employ an independent outside management consultant. Prior to employment of the consultant, the name and the qualifications of the consultant considered for employment shall be submitted to the ADC, who shall have the power of veto over the employment of the proposed consultant. However, failure to exercise such veto power shall not constitute approval or endorsement of the consultant.

(2) The requirement to submit information and the prior veto provisions of this Article are based on the authority of 12 U.S.C. 1818(b) and do not require the Comptroller to complete his/her review and act on any such information or authority within ninety (90) days.

(3) Within ninety (90) days, the consultant shall complete a study of the management and Board supervision currently being provided to the Bank, the Bank's management structure, and its staffing requirements in light of the Bank's present condition. The findings and recommendations of the consultant shall be set forth in a written report to the Board. At a minimum, the report shall contain:

- (a) the identification of present and future management and staffing requirements of each area of the Bank;
- (b) detailed written job descriptions for all executive officers;
- (c) an evaluation of each officer's qualifications and abilities, and a determination of whether each of these individuals possesses the experience and other qualifications required to perform present and anticipated duties of his/her officer position;

(d) recommendations as to whether management or staffing changes should be made, including the need for additions to or deletions from the current management team;

(e) objectives by which management's effectiveness will be measured;

(f) a training program to address identified weaknesses in the skills and abilities of the Bank's staff and management team;

(g) an evaluation of current lines of authority, reporting responsibilities and delegation of duties for all officers, including identification of any overlapping duties or responsibilities;

(h) a recommended organization chart that clearly reflects areas of responsibility and lines of authority for all officers, including the Bank's president and chief executive officer;

(i) an assessment of the Board's strengths and weaknesses along with a director education program designed to strengthen identified weaknesses;

(j) an assessment of whether Board members are receiving adequate information on the operation of the Bank to enable them to fulfill their fiduciary responsibilities and other responsibilities under law;

(k) recommendations to expand the scope, frequency and sufficiency of information provided to the Board by management;

(l) an evaluation of the extent of responsibility of current management and/or the Board for present weaknesses in the Bank's condition; and,

(m) recommendations to correct or eliminate any other deficiencies in the supervision or organizational structure of the Bank.

(4) Within ninety (90) days of completion of this study, the Board shall develop, implement, and thereafter ensure Bank adherence to a written plan, with specific time frames, that will correct any deficiencies which are noted in the study.

Copies of the Board's written plan and the consultant's study shall be forwarded to the ADC.

The ADC shall retain the right to determine the adequacy of the report and its compliance with the terms of this Agreement. In the event the written plan, or any portion thereof, is not implemented, the Board shall immediately advise the ADC, in writing, of specific reasons for deviating from the plan.

ARTICLE IV STRATEGIC PLAN

(1) Within one hundred and twenty (120) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to, a written strategic plan for the Bank covering at least a three-year period. The strategic plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, reduction in the volume of nonperforming assets, product line development, and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives. At a minimum, the plan must include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's present and future operating environment;
- (c) the development of strategic goals and objectives to be accomplished over the short and long term;

- (d) an identification of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in (1)(c) of this Article;
- (e) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems, and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under (1)(c) of this Article;
- (f) a management employment and succession program to promote the retention and continuity of capable management;
- (g) product line development and market segments that the Bank intends to promote or develop;
- (h) an action plan to improve bank earnings and accomplish identified strategic goals and objectives, including individual responsibilities, accountability, and specific time frames;
- (i) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the period covered by the strategic plan;
- (j) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
- (k) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and

- (l) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

Upon adoption, a copy of the plan shall be forwarded to the ADC for review and determination of no supervisory objection.

ARTICLE V STAFFING PLAN

(1) Within one hundred and fifty (150) days of the completion of the Bank's strategic plan, the Board shall develop a staffing plan that is consistent with the goals and objectives established in the Bank's strategic plan and that accomplishes the overall risk profile established for the Bank. At a minimum, the plan will consist of the following:

- (a) identification of the skills and expertise needed to develop, market, and administer the products identified in the strategic plan;
- (b) identification of the skills and expertise of the Bank's current staff; and
- (c) comparison of the current staff's skills and expertise identified in (1) (b) of this Article to the skills and expertise identified in (1)(a) of this Article as necessary to develop, market, and administer the products that will be utilized in accomplishing the Bank's goals and objectives.

(2) Within thirty (30) days of the development of the staffing plan, the Board will implement the plan and direct any changes necessary to provide the Bank with a staff that possesses the skills and expertise identified in (1)(a) of this Article. Thereafter the Board will ensure that the Bank adheres to the staffing plan.

(3) Upon completion of the actions required by this Article, the Board will provide a copy of its staffing plan to the ADC for review.

ARTICLE VI BOARD TO ENSURE COMPETENT MANAGEMENT

(1) Within one hundred and fifty (150) days, the Board shall ensure that the Bank has competent management in place on a full-time basis in its senior management positions to carry out the Board's policies, ensure compliance with this Agreement, applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Within one hundred and fifty (150) days, the Board shall review the capabilities of the Bank's management team to perform present and anticipated duties and the Board will determine whether management changes should be made, including the need for additions to or deletions from current management.

(3) For incumbent officers, the Board shall within one hundred and twenty (120) days assess each of these officers' experience, other qualifications, and performance compared to the position's description, duties, and responsibilities.

(4) If the Board determines that an officer will continue in his position but that the officer's depth of skills needs improvement, the Board will within one hundred and fifty (150) days develop and implement a written program, with specific time frames, to improve the officer's supervision and management of the Bank. At a minimum the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to supervise effectively;
- (b) a program to improve the effectiveness of the officer;
- (c) objectives by which the officer's effectiveness will be measured; and

a performance appraisal program for evaluating performance according to the position's description and responsibilities and for measuring performance against the Bank's goals and objectives.

Upon completion, a copy of the written program shall be submitted to the ADC.

(5) If a position mentioned in paragraph (1) of this Article is vacant now, or becomes vacant in the future, including if the Board realigns an existing officer's responsibilities, the Board shall within thirty (30) days of such vacancy, appoint a capable person to the vacant position who shall be vested with sufficient executive authority to ensure the Bank's compliance with this Agreement, and the safe and sound operation of functions within the scope of that position's responsibility.

ARTICLE VII BUDGET/BUSINESS PLAN

(1) Within one hundred twenty (120) days, the Board shall prepare, implement, and thereafter ensure Bank adherence to, a written three-year business plan that shall include a projection of major balance sheet and income statement components, and shall provide for injections of equity capital, as necessary. The business plan shall also include a written profit plan and a detailed budget.

(2) Specifically, the plan shall describe the Bank's objectives for improving Bank earnings, contemplated strategies and major capital expenditures required to achieve those objectives. Such strategies shall include specific market segments that the Bank intends to promote or develop. Procedures shall also be established to monitor the Bank's actual results against these projections and to provide for appropriate adjustments to the budget and profit plan. The plan shall set forth specific time frames for the accomplishment of these objectives.

(3) A copy of the plan shall be submitted to the ADC for review and prior determination of no supervisory objection.

ARTICLE VIII **LOAN PORTFOLIO MANAGEMENT**

(1) The Board shall, within sixty (60) days, develop, implement, and thereafter ensure Bank adherence to, a written program to improve the Bank's loan portfolio management. The program shall include, but not be limited to:

- (a) procedures to ensure satisfactory and perfected collateral documentation;
- (b) procedures to ensure that extensions of credit are granted, by renewal or otherwise, to any borrower only after obtaining and analyzing current and satisfactory credit information;
- (c) procedures to ensure conformance with loan approval requirements;
- (d) a system to track and analyze exceptions;
- (e) procedures to ensure conformance with Call Report instructions;
- (f) procedures to ensure the accuracy of internal management information systems;
- (g) a performance appraisal process, including performance appraisals, job descriptions, and incentive programs for loan officers, which adequately consider their performance relative to policy compliance, documentation standards, accuracy in credit grading, and other loan administration matters; and
- (h) procedures to track and analyze concentrations of credit, significant economic factors, and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios.

(2) Upon completion, a copy of the program shall be forwarded to the ADC.

(3) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to, systems which provide for effective monitoring of:

- (a) early problem loan identification to assure the timely identification and rating of loans and leases based on lending officer submissions;
- (b) statistical records that will serve as a basis for identifying sources of problem loans and leases by industry, size, collateral, division, group, indirect dealer, and individual lending officer;
- (c) previously charged-off assets and their recovery potential;
- (d) compliance with the Bank's lending policies and laws, rules, and regulations pertaining to the Bank's lending function;
- (e) adequacy of credit and collateral documentation; and
- (f) concentrations of credit.

(4) Beginning September 30, 2002, and thereafter on a monthly basis, management will provide the Board with written reports including, at a minimum, the following information:

- (a) the identification, type, rating, and amount of problem loans and leases;
- (b) the identification and amount of delinquent loans and leases;
- (c) credit and collateral documentation exceptions;
- (d) the identification and status of credit related violations of law, rule or regulation;
- (e) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (a) through (d) of this Article and paragraph;

- (f) an analysis of concentrations of credit, significant economic factors, and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios;
- (g) the identification and amount of loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and,
- (h) the identification of loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

ARTICLE IX CREDIT AND COLLATERAL EXCEPTIONS

(1) Within sixty (60) days the Board shall obtain current and satisfactory credit information on all loans lacking such information, including those listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(2) Within sixty (60) days the Board shall ensure proper collateral documentation is maintained on all loans and correct each collateral exception listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(3) Effective immediately, the Bank may grant, extend, renew, alter or restructure any loan or other extension of credit only after:

- (a) documenting the specific reason or purpose for the extension of credit;

- (b) identifying the expected source of repayment in writing;
- (c) structuring the repayment terms to coincide with the expected source of repayment;
- (d) obtaining and analyzing current and satisfactory credit information, including cash flow analysis, where loans are to be repaid from operations;
 - (i) Failure to obtain the information in (3)(d) shall require a majority of the full Board (or a delegated committee thereof) to certify in writing the specific reasons why obtaining and analyzing the information in (3)(d) would be detrimental to the best interests of the Bank.
 - (ii) A copy of the Board certification shall be maintained in the credit file of the affected borrower(s). The certification will be reviewed by this Office in subsequent examinations of the Bank; and
- (e) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable.

ARTICLE X CRITICIZED ASSETS

(1) The Bank shall take immediate and continuing action to protect its interest in those assets criticized in the ROE, in any subsequent Report of Examination, by internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination.

(2) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to, a written program designed to eliminate the basis of criticism of assets criticized in the ROE, in any subsequent Report of Examination, or by any internal or external

loan review, or in any list provided to management by the National Bank Examiners during any examination as "doubtful," "substandard," or "special mention." This program shall include, at a minimum:

- (a) an identification of the expected sources of repayment;
- (b) the appraised value of supporting collateral and the position of the Bank's lien on such collateral where applicable;
- (c) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations; and
- (d) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment.

(3) Upon adoption, a copy of the program for all criticized assets equal to or exceeding twenty five thousand dollars (\$25,000) shall be forwarded to the ADC.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

(5) The Board, or a designated committee, shall conduct a review, on at least a monthly basis, to determine:

- (a) the status of each criticized asset or criticized portion thereof that equals or exceeds twenty five thousand dollars (\$25,000);
- (a) management's adherence to the program adopted pursuant to this Article;
- (b) the status and effectiveness of the written program; and,
- (c) the need to revise the program or take alternative action.

(6) A copy of each review shall be forwarded to the ADC on a quarterly basis (in a format similar to Appendix A, attached hereto).

(7) The Bank may extend credit, directly or indirectly, including renewals, extensions or capitalization of accrued interest, to a borrower whose loans or other extensions of credit are criticized in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination and whose aggregate loans or other extensions exceed twenty five thousand dollars (\$25,000) only if each of the following conditions are met:

- (a) the Board or designated committee finds that the extension of additional credit is necessary to promote the best interests of the Bank and that prior to renewing, extending or capitalizing any additional credit, a majority of the full Board (or designated committee) approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank; and,
- (b) a comparison to the written program adopted pursuant to this Article shows that the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

(8) A copy of the approval of the Board or of the designated committee shall be maintained in the file of the affected borrower.

ARTICLE XI CREDIT RISK

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to reduce the high level of credit risk in the Bank. The program shall include, but not be limited to:

- (a) procedures to strengthen credit underwriting, particularly in the commercial and instalment portfolios;
- (b) procedures to strengthen management of credit operations and to maintain an adequate, qualified staff in all credit areas;
- (c) procedures for strengthening collections; and
- (d) an action plan to control loan growth.

Upon completion, the Board shall submit a copy of the program to the ADC.

(2) At least quarterly, the Board shall prepare a written assessment of the bank's credit risk, which shall evaluate the Bank's progress under the aforementioned program. The Board shall promptly submit a copy of this assessment to the ADC.

ARTICLE XII INTERNAL LOAN REVIEW

(1) The Board shall within ninety (90) days employ or designate a sufficiently experienced and qualified person(s) or firm to ensure the timely and independent identification of problem loans and leases.

(2) Within ninety (90) days, the Board shall establish an effective, independent, and on-going loan review system to review, at least quarterly, the Bank's loan and lease portfolios to assure the timely identification and categorization of problem credits. The system shall provide for a written report to be filed with the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the *Comptroller's Handbook*. Such reports shall, at a minimum, include conclusions regarding:

- (a) the overall quality of the loan and lease portfolios;
- (b) the identification, type, rating, and amount of problem loans and leases;
- (c) the identification and amount of delinquent loans and leases;

- (d) credit and collateral documentation exceptions;
- (e) the identification and status of credit related violations of law, rule or regulation;
- (f) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (b) through (e) of the Article;
- (g) concentrations of credit;
- (h) loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (i) loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

ARTICLE XIII VIOLATIONS OF LAW

(1) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule or regulation cited in the ROE and in any subsequent Report of Examination.

(2) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to, specific procedures to prevent future violations as cited in the ROE and shall adopt, implement, and ensure Bank adherence to, general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules, and regulations applicable to their areas of responsibility.

(3) Within sixty (60) days of receipt of any subsequent Report of Examination which cites one or more violations of law, rule, or regulation, the Board shall adopt, implement, and thereafter ensure Bank adherence to, specific procedures to prevent future violations as cited in the ROE, and shall adopt, implement, and ensure Bank adherence to general procedures

addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(4) Upon adoption, a copy of these procedures shall be promptly forwarded to the ADC.

ARTICLE XIV CALL REPORTS

(1) Within sixty (60) days, the Board shall adopt and cause the Bank to implement policies and procedures, in accordance with the *Instructions for Preparation of Consolidated Reports of Condition and Income*, to ensure that all official and regulatory reports filed by the Bank accurately reflect the Bank's condition as of the date that such reports are submitted. Thereafter the Board shall ensure Bank adherence to the policies and procedures adopted pursuant to this Article.

(2) Upon adoption of the policies and procedures, the Board shall promptly submit a copy of the policies to the ADC.

ARTICLE XV SERVICE AGREEMENTS WITH OUTSIDE PARTIES

(1) Before entering into a contractual agreement with any party (servicer) which provides services to the Bank, including data processing, loan applications processing, account management, and management information systems (MIS), the Board shall perform a comprehensive due diligence review of the servicer to assess management capabilities, adequacy of staffing, existence of proper internal controls, comprehensiveness of operating procedures, and adequacy of MIS to fulfill the Bank's needs. The Board shall also assess the financial strength of the servicer and determine the servicer's ongoing viability. If the Board's evaluation does not demonstrate that the servicer possesses these attributes, then the Board shall not enter

into the agreement. The Board shall submit to the ADC a copy of their written evaluation before the execution of a contract with any servicer.

(2) Within ninety (90) days, the Board shall prepare the aforementioned written analysis with regard to any servicer with which the Bank has an existing contractual service agreement, and submit a copy to the ADC.

(3) The Board shall designate a Bank officer to monitor the operations of such servicer(s) and to submit to the Board, at least quarterly, a written appraisal of the servicer's performance in providing services to the Bank, and in maintaining sufficient management, staff, controls, procedures and MIS. The Board shall forward a copy of these appraisals to the ADC.

(4) In the event that the aforementioned written appraisals demonstrate that such servicer(s) has failed to provide acceptable services to the Bank, or to maintain the necessary management, staff, controls, procedures, and MIS, and if such servicer(s) is(are) unable or unwilling to correct these deficiencies, the Board shall terminate the contract between the Bank and servicer(s).

ARTICLE XVI STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

(1) Within ninety (90) days, the Board shall adopt and implement a plan for complying with the requirements of the Federal Financial Institutions Examination Council's policy statement, *Interagency Guidelines Establishing Standards for Safeguarding Customer Information*, set out as Appendix B of the regulation at 12 C.F.R. Part 30.

(2) A copy of the plan shall be submitted to the ADC for review.

ARTICLE XVII BUSINESS RESUMPTION AND CONTINGENCY PLAN

(1) Within ninety (90) days, the Bank shall develop and test a formal Bank Information Systems Resumption and Corporate Contingency Plan which, at a minimum,

complies with the requirements set forth in Banking Bulletin 97-23, dated May 16, 1997, adopting the Federal Financial Institutions Examination Council's revised policy statement (SP-5), *Corporate Business Resumption and Contingency Planning*.

(2) Within one hundred and twenty (120) days, and at least annually thereafter, the Board shall review its Bank Information Systems resumption and contingency plan and perform a test of all necessary programs and system applications using its backup location, or recovery operation center, to ensure the continuation of operations in the event of a disaster. The Board shall document the results of this review and test in its meeting minutes.

(3) A copy of the plan and test results shall be forwarded to the ADC for review.

ARTICLE XVIII CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the ADC for review or approval, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) The Board shall ensure that the Bank has processes, personnel, and control systems for proper implementation of and adherence to the plans developed pursuant to this Agreement.

(3) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him/her by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(4) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the ADC for good cause upon written application by the Board.

(5) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(6) In each instance in this Agreement in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Agreement;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Agreement;
- (c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any non-compliance with such actions.

(7) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor

the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

/s/ Donald S. Smith

Donald S. Smith
Assistant Deputy Comptroller
Dallas South Field Office

July 22,2002

Date

AND IN FURTHER TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

| | |
|--------------------------------|---------------|
| Signed | 7-22-02 |
| _____ Hugh Ann Bankhead | _____ Date |
| Signed | 7-22-02 |
| _____ R. Hughes Dillard | _____ Date |
| Signed | 7-22-02 |
| _____ Ben E. Flatt | _____ Date |
| Signed | 7/22/02 |
| _____ William G. McCullough | _____ Date |
| Signed | 7-22-02 |
| _____ Edward O. Price | _____ Date |
| Signed | 7-22-02 |
| _____ Betty Stubbs | _____ Date |
| Signed | 7-22-02 |
| _____ Gregg Stubbs | _____ Date |
| _____ | _____ |