

**#2002-63**

**AGREEMENT BY AND BETWEEN  
THE FIRST NATIONAL BANK OF O'DONNELL  
O'DONNELL, TEXAS  
AND  
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY**

The First National Bank of O'Donnell, O'Donnell, 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, dated February 11, 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 pursuant to this Agreement shall be forwarded to:

Debra A. Garland  
Assistant Deputy Comptroller  
Lubbock Field Office  
5225 South Loop 289, Suite 108  
Lubbock, Texas 79424

## **ARTICLE II -- LOAN PORTFOLIO MANAGEMENT**

(1) The Board shall, within ninety (90) 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; and,
- (f) Procedures to ensure the accuracy of internal management information systems.

(2) The Board shall, within ninety (90) days, 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 use a loan and lease grading system consistent with the guidelines set forth in the Rating Credit Risk booklet of the Comptroller's Handbook.

(3) Beginning June 30, 2002, on a quarterly 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; and
- (d) The identification and status of credit related violations of law, rule, or regulation;

(4) Upon completion, a copy of the programs noted in this Article shall be forwarded to the Assistant Deputy Comptroller.

### **ARTICLE III-- STRATEGIC PLAN**

(1) Within ninety (90) 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, and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives, and, at a minimum, 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 (14)(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.

(2) Upon adoption, a copy of the plan shall be forwarded to the Assistant Deputy Comptroller for review and approval.

#### **ARTICLE IV-- PROFIT PLAN**

(1) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to, a written profit plan to improve and sustain the earnings of the Bank.

This plan shall include, at minimum, the following elements:

- (a) Identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance;
- (b) Realistic and comprehensive budgets, including projected balance sheets and year-end income statements;
- (c) A budget review process to monitor both the Bank's income and expenses, and to compare actual figures with budgetary projections; and
- (d) A description of the operating assumptions that form the basis for major projected income and expense components.

(2) The budgets and related documents required in paragraph (1) above for 2002 shall be submitted to the Assistant Deputy Comptroller upon completion. The Board shall submit to the Assistant Deputy Comptroller annual budgets as described in paragraph (1) above for each year this Agreement remains in effect. The budget for each year shall be submitted on or before November 30 of the preceding year.

(3) The Board shall forward comparisons of its balance sheet and profit and loss statement to the profit plan projections to the Assistant Deputy Comptroller on a quarterly basis.

#### **ARTICLE VI -- VIOLAIONS OF LAW - LENDING LIMITS**

(1) The Bank shall not lend money or otherwise extend credit to any borrower in violation of the Bank's legal lending limit at 12 U.S.C. § 84.

(2) Within ninety (90) days, the Bank shall cause all loans or other extensions of credit which exceed the Bank's legal lending limit at 12 U.S.C. § 84 to be reduced to conforming amounts.

(3) Within ninety (90) days, the Board shall establish, implement, and thereafter ensure Bank adherence to written procedures to prevent future violations of 12 U.S.C. § 84.

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

#### **ARTICLE VI -- CLOSING**

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller 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 to ensure implementation of, and adherence to, the articles of 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 Assistant Deputy Comptroller 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) 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 her hand on behalf of the Comptroller.

/s/ Debra A. Garland

6/13/02

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Debra A. Garland  
Assistant Deputy Comptroller  
Lubbock Field Office

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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	06-13-02
_____ Bob Henderson	_____ Date
_____ Cheryl Hogg	_____ Date
Signed	6/13/02
_____ Jon Hogg	_____ Date
Signed	6-13-02
_____ Nelson Hogg	_____ Date
Signed	6-13-02
_____ Mickey Hughes	_____ Date