

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

First National Bank, Evant, 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 (ROE), dated May 10, 2004 (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. This Agreement supercedes and takes the place of the formal written agreement entered into by the Comptroller and the Bank on August 27, 2003, which prior agreement is hereby terminated.

**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:

Randy D. Fenimore  
Assistant Deputy Comptroller  
Austin Field Office  
8310 Capital of Texas Highway North, Suite 250  
Austin, Texas, 78731-1080

## **ARTICLE II -- COMPLIANCE COMMITTEE**

(1) Within 30 days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than two shall be employees of the Bank. 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.

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

(3) 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;
- (b) the results of those actions; and
- (c) a description of the additional actions needed to achieve full compliance with each Article of this Agreement.

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

## **ARTICLE III -- CAPITAL PLAN AND HIGHER MINIMUMS**

(1) The Bank shall maintain, at a minimum, the following capital levels (as defined in 12 C.F.R. Part 3):

- (a) Tier 1 capital at least equal to twelve percent (12%) of risk-weighted assets;

(b) Tier 1 capital at least equal to eight percent (8%) of adjusted total assets.<sup>1</sup>

(2) The requirement in this Agreement to meet and maintain a specific capital level means that the Bank may not be deemed to be “well capitalized” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6, pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

(3) Effective immediately, the Board shall permit the declaration of a dividend or the payment of a bonus only after receiving a prior written determination of no supervisory objection from the ADC.

#### **ARTICLE IV -- ALLOWANCE FOR LOAN AND LEASE LOSSES**

(1) The Board shall establish a program for the maintenance of an adequate Allowance for Loan and Lease Losses (Allowance). The program shall provide for a review of the Allowance by the Board at least once each calendar quarter. Any deficiency in the Allowance shall be remedied in the quarter it is discovered, prior to the filing of the Consolidated Reports of Condition and Income, by additional provisions from earnings.

(2) Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the Allowance.

#### **ARTICLE V -- NEW SENIOR EXECUTIVE OFFICER**

(1) Within thirty (30) days, the Board shall appoint a new, capable Senior Lending Officer who shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and to ensure the safe and sound operation of the Bank.

(2) Prior to the appointment of any individual to the Senior Lending Officer position, the Board shall submit to the ADC the following information:

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<sup>1</sup> Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure used for Call Report purposes minus end-of-quarter intangible assets. As further noted in 12 C.F.R. § 3.2(a), a bank may be required to compute and maintain its leverage ratio on the basis of actual, rather than average total assets.

(a) the information sought in the “Changes in Directors and Senior Executive Officers” booklet of the Comptroller’s Corporate Manual, together with a legible fingerprint card for the proposed individual;

(b) a written statement of the Board’s reasons for selecting the proposed officer; and

(c) a written description of the proposed officer’s duties and responsibilities.

(3) The ADC shall have the power to disapprove the appointment of the proposed new senior executive officer. However, the lack of disapproval of such individual shall not constitute an approval or endorsement of the proposed director.

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

#### **ARTICLE VI -- OFFICER LENDING RESTRICTIONS**

(1) Effective immediately, pre-funding approval must be obtained from the Board, or a designated committee thereof, before making an extension of credit greater than 50 thousand dollars (\$50,000).

#### **ARTICLE VII -- CREDIT AND COLLATERAL EXCEPTIONS**

(1) Effective immediately, the Board shall take action to obtain current and satisfactory credit information on all loans over 25 thousand dollars (\$25,000) lacking such information.

(2) Effective immediately, the Board shall take all possible actions to obtain proper collateral documentation on all loans.

(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 (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 (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 the collateral and properly perfecting the Bank's lien on it where applicable.

#### **ARTICLE VIII -- CRITICIZED ASSETS**

(1) Within thirty (30) 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. 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.

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

- (a) the status of each criticized asset or criticized portion thereof that equals or exceeds 50 thousand dollars (\$50,000);
- (b) management's adherence to the program adopted pursuant to this Article;
- (c) the status and effectiveness of the written program; and
- (d) the need to revise the program or take alternative action.

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

(4) The Bank may extend credit, directly or indirectly, including renewals, extensions or overdrafts, to a borrower whose loans or other extensions of credit are criticized *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.

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

#### **ARTICLE IX -- ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME**

- (1) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank, or requires an extension of any timeframe within this Agreement, the Board shall submit a written request to the ADC asking for relief.

- (2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the ADC to exempt the Bank from any provision, or that require an extension of any timeframe within this Agreement. All such requests shall be accompanied by relevant supporting documentation.

- (3) The ADC's decision in granting the request is final and not subject to further review.

#### **ARTICLE X -- 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) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him 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.

- (3) 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.

(4) 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.

(5) 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/ Randy D. Fenimore*

*7/13/04*

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Randy D. Fenimore  
Assistant Deputy Comptroller  
Austin Field Office

\_\_\_\_\_  
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 \_\_\_\_\_  
Murlin Bottinger

July 20, 2004 \_\_\_\_\_  
Date

Signed \_\_\_\_\_  
Linda K. Comer

July 13, 2004 \_\_\_\_\_  
Date

Signed \_\_\_\_\_  
Warren Phillip Duren

7/13/2004 \_\_\_\_\_  
Date

Signed \_\_\_\_\_  
Jack Elam

7-13-2004 \_\_\_\_\_  
Date

Signed \_\_\_\_\_  
Sylvia Straley

7-13-2004 \_\_\_\_\_  
Date