

**#2006-92**

**AGREEMENT BY AND BETWEEN  
FIRST NATIONAL BANK IN PAWHUSKA  
PAWHUSKA, OKLAHOMA  
AND  
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY**

First National Bank in Pawhuska, Pawhuska, Oklahoma (“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 has found unsafe and unsound banking practices relating to loan portfolio management, criticized assets, internal loan review, allowance for loan and lease losses, credit and collateral exceptions, collection procedures, nonaccrual loans, overdraft policy, cash items policy, and violations of law and regulation at the Bank.

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) This Agreement shall cause the Bank to be designated as in “troubled condition,” as set forth in 12 C.F.R. § 5.51(c)(6), less otherwise informed in writing by the Comptroller. In addition, this Agreement shall cause the Bank not to be designated as an “eligible bank” for purposes of 12 C.F.R. § 5.3(g), unless otherwise informed in writing by the Comptroller.

(6) 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:

Leigh R. Hoge  
Assistant Deputy Comptroller  
Eastern Oklahoma Field Office  
7134 S. Yale Suite 910  
Tulsa, Oklahoma 74136

## **ARTICLE I I -- LOAN PORTFOLIO MANAGEMENT**

(1) The Board shall, within ~~thirty (30) days~~ 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; and,
- (e) procedures to ensure conformance with Call Report instructions.

(2) Within ~~thirty (30) days~~ 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) previously charged-off assets and their recovery potential;
- (c) compliance with the Bank's lending policies and laws, rules, and regulations pertaining to the Bank's lending function;
- (d) adequacy of credit and collateral documentation; and
- (e) concentrations of credit.

(3) Beginning ~~June~~ July 2006, 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.

(4) Upon completion, a copy of the program shall be forwarded to the ADC for review and prior written determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the ADC, the Bank shall implement and adhere to the programs.

### **ARTICLE III -- CRITICIZED ASSETS**

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

(2) 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 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 fifty thousand dollars (\$50,000) shall be forwarded to the ADC for review and prior written determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the ADC, the Bank shall implement and adhere to the programs.

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 fifty 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.

A copy of each review shall be forwarded to the ADC on a quarterly basis.

(4) 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 is 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.

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

#### **ARTICLE IV -- INTERNAL LOAN REVIEW**

(1) The Board shall within thirty (30) 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 thirty (30) 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” and “Allowance for Loan and Lease Losses” booklets of the *Comptroller’s Handbook*. Such reports shall include, at a minimum, 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.

(3) A written description of the program called for in this Article shall be forwarded to the ADC.

(4) The Board shall evaluate the internal loan and lease review report(s) and shall ensure that immediate, adequate, and continuing remedial action, if appropriate, is taken upon all findings noted in the report(s).

(5) A copy of the reports submitted to the Board, as well as documentation of the action taken by the Bank to collect or strengthen assets identified as problem credits, shall be preserved in the Bank.

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

(1) The Board shall within ninety (90) days review the adequacy of the Bank's Allowance for Loan and Lease Losses ("Allowance") and shall establish a program for the maintenance of an adequate Allowance. This review and program shall be designed in light of the comments on maintaining a proper Allowance found in the "Allowance for Loan and Lease Losses" booklet of the *Comptroller's Handbook*, and shall focus particular attention on the following factors:

- (a) results of the Bank's internal loan review;
- (b) results of the Bank's external loan review;
- (c) an estimate of inherent loss exposure on each significant credit;
- (d) an estimate of inherent loss exposure on each credit in excess of five thousand dollars (\$5,000);
- (e) loan loss experience;
- (f) trends of delinquent and nonaccrual loans;
- (g) concentrations of credit in the Bank; and
- (h) present and prospective economic conditions.

(2) 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. Written documentation shall be maintained indicating the



factors considered and conclusions reached by the Board in determining the adequacy of the Allowance.

(3) A copy of the Board's program shall be submitted to the ADC for review and prior written determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the ADC, the Bank shall implement and adhere to the program.

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

(1) Within ninety (90) 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 ROE, 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 ninety (90) 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; and,

- (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 VII -- COLLECTION PROCEDURES**

(1) Within thirty (30) days, the Bank shall develop, implement and thereafter adhere to a written program designed to improve and strengthen collection efforts. The program shall include specific plans to:

- (a) reduce delinquent loans; and
- (b) improve recovery of charged-off assets.

(2) Upon completion, that Board shall submit a copy of the program to the ADC for review.

#### **ARTICLE VIII -- NONACCRUAL LOANS**

(1) The Bank shall immediately reverse or charge off all interest that has been accrued contrary to the requirements contained in the *Instructions for Preparation of*

*Consolidated Reports of Condition and Income* (“Call Report Instructions”) governing nonaccrual loans. Further, the Bank shall immediately reverse or charge off that portion of the remaining accrued interest on such loans that, when combined with principal, is not protected by sound collateral values.

(2) Within thirty (30) days, the Board shall adopt and implement written policies and procedures governing the supervision and control of nonaccrual loans. Such policies and procedures shall:

- (a) be consistent with the accounting requirements contained in the Call Report Instructions;
- (b) address the circumstances under which accrued interest due on a loan may be added to the outstanding principal amount when the loan is renewed or restructured; and
- (c) require the monthly presentation to the Board of all loans meeting any of the nonaccrual criteria.

(3) Within thirty (30) days, the Board shall develop and implement a written policy governing the identification of and accounting treatment for nonaccrual loans. The policy shall address paragraph (1) above and shall be consistent with the accounting requirements contained in the Call Report Instructions.

(4) Within thirty (30) days, the Board shall develop and implement a written policy that shall provide for auditing accrued interest on loans. The policy shall, at a minimum, provide for quarterly audits of loan accruals and incorporate procedures for periodically testing the Bank's identification of nonaccrual loans as governed by the policy adopted pursuant to Paragraph ( 2 ) above.

(5) Upon adoption, a copy of the written policies and procedures shall be forwarded to the ADC and the Board shall thereafter ensure Bank adherence to all policies and procedures developed pursuant to this Article.

#### **ARTICLE IX -- OVERDRAFT POLICY**

(1) Within ~~thirty (30)~~ sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written policy concerning the extension of overdrafts that shall include, at a minimum:

- (a) conditions and circumstances under which overdrafts will be allowed;
- (b) charges that will be levied against depositors using overdrafts; and,
- (c) conditions and circumstances under which overdrafts will be charged off.

(2) Upon adoption, a copy of this policy shall be forwarded to the ADC.

#### **ARTICLE X -- CASH ITEMS POLICY**

(1) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written policy concerning cash items that shall include, at a minimum:

- (a) Types of assets that should be held in the cash items account;
- (b) Conditions and circumstances under which assets will be held in the cash items account;
- (c) Time periods that assets are allowed to be held in the cash items account; and,
- (d) Procedures for periodic Board review and approval of all cash items.

(2) Upon adoption, a copy of this policy shall be forwarded to the ADC.

## ARTICLE XI -- CAPITAL PLAN AND HIGHER MINIMUMS

- (1) The Bank shall maintain the following capital levels (see 12 C.F.R. Part 3):
  - (a) Tier 1 capital at least equal to eight percent (8 %) of adjusted total assets.
  - (b) Tier 1 capital at least equal to twelve percent (12%) of risk-weighted assets;
- (2) The requirement to meet and maintain a specific capital level means that the Bank is no longer 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) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a three (3) year capital program. The program shall include:
  - (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1);
  - (b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
  - (c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
  - (d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
  - (e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and
  - (f) a dividend policy that permits the declaration of a dividend *only*:
    - (i) when the Bank is in compliance with its approved capital program;

- (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
- (iii) with the prior written determination of no supervisory objection by the ADC.

(4) Upon completion, the Bank's capital program shall be submitted to the ADC for prior determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the ADC, the Bank shall implement and adhere to the capital program. The Board shall review and update the Bank's capital program on an annual basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted to the ADC.

## **ARTICLE XII -- 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 thirty (30) 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 thirty (30) days of receipt of any subsequent Report of Examination which cites 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 for review and prior written determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the ADC, the Bank shall implement and adhere to the programs.

### **ARTICLE XIII -- CONFLICT OF INTEREST POLICY**

(1) Within ~~thirty~~ (30) sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written, comprehensive conflict of interest policy applicable to the Bank's and the Bank's holding company's directors, principal shareholders, executive officers, affiliates, and employees (Insiders) and related interests of such Insiders. The policy, in addition to defining a conflict of interest, shall address:

- (a) avoidance of conflicts of interest and breaches of fiduciary duty, and the appearance of conflicts of interest;
- (b) involvement in the loan approval process of Insiders who may benefit directly or indirectly from the decision to grant credit;
- (c) disclosure of actual and potential conflicts of interest to the Board, and periodic disclosure of "related interests" as defined by 12 C.F.R. Part 215;
- (d) requirements for arms-length dealing in any transactions by Insiders, or their related organizations, involving the Bank's sale, purchase, or rental of property and services;
- (e) disclosure of any Insider's material interest in the business of a borrower, an applicant, or other customer of the Bank; and

- (f) restrictions on and disclosure of receipt of anything of value by Insiders, directly or indirectly, from borrowers, loan applicants, other customers, or suppliers of the Bank.

(2) Upon adoption, a copy of this conflict of interest policy shall be forwarded to the Assistant Deputy Comptroller for review.

(3) Within sixty (60) days, the Compliance Committee shall conduct a review of the Bank's existing relationships with its and its holding company's directors, executive officers, affiliates, principal shareholders, employees and their related interests for the purpose of identifying relationships not in conformity with the policy. The Board shall ensure that:

- (a) any nonconforming relationships are brought into conformity with the policy within ninety (90) days; and
- (b) that within ninety (90) days the Bank is properly reimbursed for:
  - (i) any excess or improper payments to Insiders and their related interests; and
  - (ii) any excess or improper payments for services provided by Insiders and their related interests.

(4) Thereafter, the Board shall review all proposed transactions, or modifications of existing relationships, between the Bank and any of its or its holding company's directors, executive officers, affiliates, principal shareholders, employees and their related interests.

(5) Documentation supporting these reviews shall be in writing and preserved in the Bank.



## **ARTICLE XIV -- CLOSING**

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or prior written determination of no supervisory objection, 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 programs and systems developed pursuant to the Articles in 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.

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.

(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) 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.

(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 Comptroller or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his 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 Comptroller has any intention to enter into a contract. The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to

amendment or modification by any extraneous expression, prior agreements or prior arrangements 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.

<u>S/</u> Leigh R. Hoge Assistant Deputy Comptroller Eastern Oklahoma Field Office	<u>6/16/06</u> Date
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**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.

<u>S/</u> Steven Larsh	<u>6/16/06</u> Date
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<u>S/</u> Sam Strahm	<u>6/16/06</u> Date
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<u>S/</u> Elizabeth Stuart	<u>6/16/06</u> Date
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<u>S/</u> Douglas Stuart	<u>6/16/06</u> Date
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<u>S/</u> Larry Stutz	<u>6/16/06</u> Date
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<u>S/</u> Krista Stevens	<u>6/16/06</u> Date
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