

AGREEMENT BY AND BETWEEN  
The First National Bank of Buffalo  
Buffalo, Wyoming  
and  
The Comptroller of the Currency

The First National Bank of Buffalo, Buffalo, Wyoming (“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 March 17, 2008 (“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 that the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to the:

Assistant Deputy Comptroller  
Salt Lake City/Billings Field Office  
2795 East Cottonwood Parkway, Suite 390  
Salt Lake City, Utah 84121

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) Within ten (10) days of the date of this Agreement, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee or controlling shareholder 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. Upon appointment, the names of the members of the Compliance Committee and, in the event of a change of the membership, the name of any new member shall be submitted in writing to the Assistant Deputy Comptroller. 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 date of this Agreement and every calendar quarter thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) a description of the action needed to achieve full compliance with each Article of this Agreement;
  - (b) actions taken to comply with each Article of this Agreement; and
  - (c) the results and status of those actions.
- (4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller within ten (10) days of receiving such report.

### ARTICLE III

#### CREDIT ADMINISTRATION

- (1) Within sixty (60) days of the date of this Agreement, the Board shall prepare and submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a written program (including appropriate revisions to policies and procedures) designed to correct the Bank's deficiencies in credit administration, to include at a minimum:
- (a) Risk Management Practices for managing the Bank's concentrations of credit in commercial real estate ("CRE") that include at a minimum:
    - (i) the establishment of an overall CRE strategy, to include CRE concentration limits stratified by type, locality and other meaningful measures;
    - (ii) monthly monitoring of concentration reports that stratify the CRE portfolio by product type, locality and other meaningful measures;

- (iii) strategies and procedures to manage CRE concentrations to conform with established limits set in Subparagraph (i) of this Article;
- (b) Loan Policy CRE underwriting standards by CRE type that include specific requirements relating to:
  - (i) minimum financial analysis and documentation of all secondary repayment sources; and
  - (ii) minimum analysis and documentation for evaluations used in lieu of appraisals.
- (c) Procedures to ensure that loans made for the purpose of constructing or developing CRE are underwritten and monitored in a safe and sound manner, including but not limited to, procedures for ensuring that:
  - (i) periodic, meaningful, well-documented, inspections are performed on all construction projects;
  - (ii) draw requests are advanced in accordance with construction progress and budget;
  - (iii) documentation of project completion versus amount advanced is maintained;
  - (iv) lien waivers are obtained from contractors and sub-contractors; and
  - (v) borrower's hard equity is tracked by project.
- (d) Procedures to ensure that the risk associated with the Bank's construction and development loans is properly reflected and accounted for on the

Bank's books and records, to include, at a minimum, provisions requiring that:

- (i) the Bank's loans and other assets are appropriately and timely risk rated and/or charged-off by the lending officers using a loan grading system that is based upon current facts, existing repayment terms and that is consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the *Comptroller's Handbook*;
  - (ii) loan officers are accountable for failing to appropriately and timely risk rate and/or place loans on nonaccrual; and
  - (iii) consideration of loan officer failure to properly risk rate and/or place loans on nonaccrual in periodic performance reviews and compensation.
- (e) Procedures to ensure that guarantor support for commercial loans is analyzed and documented;
- (f) Training to ensure compliance with this Paragraph; and
- (g) Policies designed to ensure that management effectively addresses adverse findings contained in compliance reviews, audits, and examinations relating to specific loans or the loan portfolio to include, at a minimum, a requirement that management responds to all audit, compliance, and regulatory criticisms with a written action plan that contains:
- (i) corrective actions to be taken;
  - (ii) deadlines for taking the corrective action; and
  - (iii) the individual responsible for making the corrective action.

(2) Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement and thereafter ensure adherence to the program, policies and procedures required by this Article.

(3) At least quarterly, the Board shall submit a written assessment of the Bank's progress in reaching compliance with the policies and procedures required by this Article to the Assistant Deputy Comptroller.

#### ARTICLE IV

##### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Immediately following the signing of this Agreement, the Board shall 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 program shall be designed to meet Generally Accepted Accounting Principles and regulatory guidance set forth in FAS 5, FAS 114, OCC Bulletin 2001-37, OCC Bulletin 2006-47, and 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) loan loss experience;
- (e) trends of delinquent and nonaccrual loans;
- (f) concentrations of credit in the Bank;
- (g) present and prospective economic conditions;

- (h) lending policies and procedures, including underwriting and collection, charge off and recovery practices;
- (i) changes in nature and volume of the portfolio;
- (j) changes in lending management and staff;
- (k) changes in the loan review system; and
- (l) historical and industry average loss that should be applied to each category of loans.

(2) The program shall provide for a review of the Allowance by the Board at least once each calendar quarter. Clear explanations and documentation for the Allowance analysis should be maintained. 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.

## ARTICLE V

### TRUST ASSET MANAGEMENT AND ADMINISTRATION

(1) Within thirty days (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to written policies and procedures to ensure that the Bank is in compliance with prudent investor standards for proper trust asset administration and compliance with law, regulations and prudent investing guidelines. At a minimum, the revised policies and procedures shall provide for:

- (a) procedures for implementation and maintenance of separation of duties for the posting of the Bank's asset management records, and the authority to move assets from the custodian;
- (b) procedures for the independent daily reconciliation of all asset movement at the custodian;
- (c) reconciliation of all assets held at the custodian to the Bank's asset management records at a minimum monthly;
- (d) a schedule of investment securities and other assets held in custody that is separated by outside brokers and is independently reconciled to each broker's statement at least monthly;
- (e) sound fiduciary prudent investment standards and principles consistent with applicable law, terms of the governing instrument, the Bank's fiduciary responsibilities and support for investment decisions in each account;
- (f) accurate accounting systems for trust assets;
- (g) written investment objectives and comprehensive records for each account administered;
- (h) a system that ensures written directions are obtained from authorized power holders for directed investments; and
- (i) standards for performing asset reviews in compliance with 12 C.F.R. § 9.6.



(2) The Board's compliance with paragraph one (1) of this article shall include standards for performing a suitable audit in compliance with 12 C.F.R. § 9.9 at a minimum, these policies and procedures shall provide for:

- (a) engagement in a suitable audit of trust activities based on risk;
- (b) audit scope should focus on the unique needs of the Bank's trust department;
- (c) auditors must possess trust regulatory experience, and familiarity with the type of assets held in trust accounts; and
- (d) auditors must provide workpapers that include the source of documentation, reconciliation calculations, and procedural narrative which supports a clear audit trail and conclusions.

(3) The Board's compliance with paragraph one (1) of this article shall include, at a minimum, creation of a trust audit committee which meets at least quarterly, and maintains detailed written minutes of all its activities including:

- (a) discussions with the internal and/or external auditors concerning the scope of the annual audit program to be performed;
- (b) an opinion that the scope of the audit program provides suitable audit coverage of department activities as required by 12 C.F.R. § 9.9;
- (c) a review of the competence and independence of the internal auditor;
- (d) a review of all trust department audit and examination reports within thirty (30) days of their receipt;

- (e) discussions with the trust officer and auditor(s) concerning all matters cited in the audit and examination reports of the trust department and their opinions of the present condition; and
- (f) a determination that all matters involving violations of law or regulation, contravention of sound fiduciary business principles relating to investments, organization, administration and operations, and deficiencies in the Bank's policies, practices or controls disclosed in trust department audit and examination reports are noted and corrected as required by 12 C.F.R. § 9.9.

(4) Upon adoption, a copy of these policies and procedures shall be forwarded to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection.

(5) After the Assistant Deputy Comptroller has advised the Bank that there is no supervisory objection of this policy, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of this policy.

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

## ARTICLE VI

### CAPITAL

(1) Beginning no later than July 30, 2008, the Bank shall at all times maintain the following minimum capital ratios:

- (a) tier 1 capital at least equal to eight percent (8%) of adjusted total assets;  
and
- (b) total risk-based capital at least equal to eleven percent (11%) of risk-weighted assets.

(2) For purposes of this Article, “tier 1 capital,” “total risk-based capital,” “adjusted total assets,” and “risk-weighted assets” as defined in 12 C.F.R. Part 3.

(3) The requirement in this Agreement to meet and maintain a specific capital level means that the Bank is not to be deemed “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).

(4) Effective immediately, the Bank shall only declare dividends:

- (a) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
- (b) with the prior written approval from the Assistant Deputy Comptroller, this shall be granted or denied within thirty (30) days of the receipt of a dividend request from the Bank.

(5) Upon adoption, a copy of these policies and procedures shall be forwarded to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection.

(6) After the Assistant Deputy Comptroller has advised the Bank that there is no supervisory objection of this policy, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of this policy.

## ARTICLE VII

### CONTINGENCY FUNDING PLAN

(1) Within sixty (60) days, the Board shall establish a plan that ensures the Bank operate with a robust liquidity monitoring program and maintain adequate sources of liquidity in relation to the Bank's needs. The formalized written liquidity plan should address the responsibilities of senior management during a funding crisis and include at a minimum:

- (a) a contingency funding plan that forecasts funding needs and funding sources under a stressed scenario;
- (b) establishment of triggers for initiating the plan;
- (c) identification of available sources of funding including quantity and order of preference;
- (d) identify specific scenarios that may limit the availability of certain funding sources; and
- (e) actions that management will take to ensure funding is obtained at a reasonable cost.

(2) Monthly reports shall set forth liquidity requirements and sources. Copies of these reports shall be forwarded to the Assistant Deputy Comptroller.

## ARTICLE VIII

### CLOSING

(1) Although the Board has by this Agreement consented to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the Assistant Deputy Comptroller, 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 him from so doing.

(3) Any time requirements specified in 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) This Agreement shall be effective upon execution by the parties hereto, and its provisions shall continue in full force and effect until such time as they shall be amended by written mutual consent of the parties to this 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 noncompliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any

noncompliance with such actions.

(6) This Agreement expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States. 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 has hereunto set his hand.

/s/

August 14, 2008

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H. Gene Robinson  
Assistant Deputy Comptroller  
Salt Lake City/Billings Field Office

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Date

