

AGREEMENT BY AND BETWEEN  
Florida Capital Bank, N.A.  
Jacksonville, Florida  
and  
The Comptroller of the Currency

Florida Capital Bank, N.A., Jacksonville, Florida (“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.

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 the:

Assistant Deputy Comptroller  
North Florida Field Office  
8375 Dix Ellis Trail, Suite 403  
Jacksonville, Florida 32256

## ARTICLE II

### CREDIT RISK

(1) Within forty-five (45) days, the Board shall continue to 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 that continue to strengthen credit underwriting, particularly in the Commercial Real Estate portfolio;
- (b) procedures that continue to strengthen management and Board oversight of the lending staff in all of the bank's markets; and,
- (c) an action plan that continues to detail the Board's intentions to regulate loan growth.

(2) Upon adoption, a copy of the program shall be forwarded Assistant Deputy Comptroller for review and prior written determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall implement and adhere to the strategic plan.

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

## ARTICLE III

### 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.

(2) The Board shall continue to 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 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) The Bank shall provide a copy of the program for all criticized assets equal to or exceeding five hundred thousand dollars (\$500,000) to the Assistant Deputy Comptroller.

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

(5) The Board, or a designated committee, shall continue to 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 five hundred thousand dollars (\$500,000);
- (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.

(6) A copy of each review shall be forwarded to the Assistant Deputy Comptroller 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 and whose aggregate loans or other extensions exceed one million dollars (\$1,000,000) 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.

## ARTICLE IV

### LOAN REVIEW CONSULTANT

(1) The Board shall continue to employ a qualified consultant to perform an ongoing asset quality review of the Bank. The consultant shall be utilized until such time as an ongoing internal asset quality review system is developed by the Board, implemented and demonstrated to be effective.

(2) Before terminating the loan review consultant's asset quality review services, the Board shall both certify the effectiveness of the internal asset quality review system, and receive prior written determination of no supervisory objection from the Assistant Deputy Comptroller.

(3) Prior to the appointment or employment of any new individual to this loan review consultant or entering into any contract with another consultant, the Board shall submit the name and qualifications of the proposed consultant and the proposed terms of employment to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection.

(4) The requirement to submit information and the provisions for prior written determination of no supervisory objection in 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 review and act on any such information or authority within ninety (90) days.

## ARTICLE V

### LIQUIDITY

(1) Within forty-five (45) days, the Board shall take actions to improve policies and processes to manage the bank's liquidity and maintain it at a level that is sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base. Such actions may include, but are not necessarily limited to:

- (a) revising the liquidity policy to clearly define risk limits that can be compared to current performance and reported to the Board using reports specified in the policy;
- (b) ensuring that forward looking sources and uses analyses cover all forms of funding sources and uses over 30, 60, and 90 day horizons and these analyses are completed on at least a monthly basis;
- (c) developing a comprehensive Contingency Funding Plan that includes specific and measurable trigger points that clearly define stages of contingency funding; and,
- (d) developing a formal liquidity risk reporting package to be presented to the Board.

(2) The Board shall formally review the Bank's liquidity on a monthly basis utilizing an appropriate liquidity risk reporting package as well as any other reports that may be necessary. Copies of these reports shall be forwarded to the Assistant Deputy Comptroller in the Bank's quarterly report to the Assistant Deputy Comptroller.

## ARTICLE VI

### PROFIT PLAN

(1) Within sixty (60) days, the Board shall implement and thereafter ensure adherence to a written profit plan to improve and sustain the earnings of the Bank. This plan shall continue to 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 2009 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 Formal 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 VII

### STRATEGIC PLAN

(1) Within one hundred 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 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 (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.

(2) Upon adoption, a copy of the plan shall be forwarded to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall implement and adhere to the strategic plan.

(3) The Bank must give the Assistant Deputy Comptroller at least sixty (60) days advance, written notice of its intent to deviate significantly from the strategic plan. For purposes of this Article, changes that may constitute a significant deviation from the strategic plan include, but are not limited to, any significant deviations from marketing strategies, marketing partners, acquisition channels; underwriting practices and standards, account management strategies and test programs; collection strategies, partners or operations; fee structure, pricing, or fee application methods; accounting processes and practices; funding strategy; or any other changes in personnel, operations or external factors that may have a material impact on the Bank's operations or financial performance. Prior to making any changes that significantly deviate from the Bank's strategic plan, the Board shall perform an evaluation of the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls and written policies and procedures to identify, measure, monitor, and control the risks associated with the

product or service. The evaluation shall include an assessment of the impact of such change on the Bank's condition, including a profitability analysis.

(4) If the OCC determines, in its sole judgment, that the Bank has failed to submit an acceptable strategic plan as required by paragraph (1) of this Article or has failed to implement or adhere to the Bank's specific, measurable, and verifiable objectives included in the strategic plan, for which the OCC has taken no supervisory objection pursuant to paragraph (2) of this Article, then within fifteen (15) days of receiving written notice from the OCC of such fact, the Board shall develop and shall submit to the OCC for its review and prior determination of no supervisory objection a revised strategic plan, which shall detail the Bank's proposal to correct deficiencies resulting in the Bank's failure and to adhere to the Bank's original strategic plan. After the OCC has advised the Bank that it does not take supervisory objection to the revised strategic plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the revised strategic plan. Failure to submit a timely, acceptable revised strategic plan may be deemed a violation of this Agreement, in the exercise of the OCC's sole discretion.

## ARTICLE VIII

### BROKERED DEPOSITS

(1) The Bank may accept Brokered Deposits (as defined by 12 C.F.R. § 337.6(a)(2)) for deposit at the Bank only after obtaining a prior written determination of no supervisory objection from the Assistant Deputy Comptroller.

(2) The limitation of paragraph (1) shall include the acquisition of Brokered Deposits through any transfer, purchase, or sale of assets, including Federal funds transactions.

(3) If the Bank seeks to acquire Brokered Deposits, the Board shall apply to the Assistant Deputy Comptroller for written permission. Such application shall contain, at a minimum, the following:

- (a) the source, dollar volume, maturities, and cost of the Brokered Deposits to be acquired;
- (b) the proposed use of the Brokered Deposits, i.e., short-term liquidity or restructuring of liabilities to reduce cost;
- (c) alternative funding sources available to the Bank; and
- (d) the reasons why the Bank believes that the acceptance of the Brokered Deposits does not constitute an unsafe and unsound practice in its particular circumstances and does not violate the Board's approved policy parameters for such funds.
- (e) The Assistant Deputy Comptroller may require the submission of such additional information as necessary to make an informed decision. Upon consideration of the Bank's application, the Assistant Deputy Comptroller will determine whether the proposed acquisition of Brokered Deposits may be accomplished in a safe and sound manner and may condition the Bank's acquisition as the Assistant Deputy Comptroller shall deem appropriate.
- (f) Nothing in this article shall relieve the Bank of its obligation under 12 U.S.C. § 1831f to seek necessary approvals from the Federal Deposit Insurance Corporation before accepting Brokered Deposits and to comply with all the requirements of 12 U.S.C. § 1831f.

## ARTICLE IX

### CONSUMER COMPLIANCE PROGRAM

- (1) The Board shall continue to adhere to a written consumer compliance program designed to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules and regulations, especially those in the Report of Examination or in any subsequent Report of Examination. This program shall include, but not be limited to:
  - (a) adequate internal controls to ensure compliance with consumer protection laws, rules, and regulations; and,
  - (b) semiannual updates of the written policies and procedures manual to ensure it remains current;
- (2) The Board shall continue to ensure that the Bank adheres to the following actions:
  - (a) employ an audit program to test for compliance with consumer protection laws, rules and regulations;
  - (b) adhere to procedures to ensure that exceptions noted in the audit reports are corrected and responded to by the appropriate Bank personnel;
  - (c) train all appropriate Bank personnel in the requirements of all federal and state consumer protection laws, rules and regulations; and,
  - (d) provide periodic reporting of the results of the consumer compliance audit to the Board or a committee thereof.

## ARTICLE X

### PROGRESS REPORTING - QUARTERLY

- (1) The Board shall submit quarterly progress reports to the Assistant Deputy Comptroller. These reports shall set forth in detail:

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

(2) The progress reports shall also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the Report of Examination or in any future Report of Examination.

(3) The first progress report shall be submitted for the period ending March 31, 2009 and will be due within thirty (30) days of that date. Thereafter, progress reports will be due within thirty (30) days after the quarter end.

## ARTICLE XI

### 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) 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.

(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 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) ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to any program developed pursuant to this Formal Agreement.
- (b) 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;
- (c) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Agreement;
- (d) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (e) 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.

/S/  
Kennard L. Page  
Assistant Deputy Comptroller  
North Florida Field Office

3/26/2009  
Date

IN 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.

/S/  
\_\_\_\_\_  
P. Bruce Culpepper

3/26/2009  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Richard R. Dostie

3/26/2009  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
James W. Heavener

3/26/2009  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Charles E. Hughes, Jr.

3/26/2009  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
J. Malcolm Jones, Jr.

3/26/2009  
\_\_\_\_\_  
Date

/S/  
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W. Andrew Krusen, Jr.

3/26/2009  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Linda McGurn

3/26/2009  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
M. G. Sanchez

3/26/2009  
\_\_\_\_\_  
Date