

#2009-085

AGREEMENT BY AND BETWEEN
Fidelity Bank of Florida, N.A.
Merritt Island, Florida
and
The Comptroller of the Currency

Fidelity Bank of Florida, N.A., Merritt Island, 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.

The Comptroller has found unsafe and unsound banking practices relating to the Bank's increasing credit risk and violations of law relating to the appraisal requirements. The Bank's condition is unsatisfactory due primarily to poor asset quality and negative earnings performance. Additional actions by the Board and management are needed to reduce the level and severity of problem loans.

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), unless 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 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 thirty (30) days, the Board shall develop, 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 to strengthen credit underwriting, particularly in the commercial real estate portfolio; and
- (b) procedures for strengthening collections.

(c) The Board shall submit a copy of the program to the Assistant Deputy Comptroller.

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

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

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 Report of Examination, by internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination.

(2) Within sixty (60) 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 two hundred and fifty thousand dollars (\$250,000) shall be forwarded to the Assistant Deputy Comptroller.

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

(5) The Board, shall 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 to hundred and fifty thousand dollars (\$250,000);
- (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 that provided to management at our examination or in Appendix A of this Agreement.

(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 during any examination and whose aggregate loans or other extensions exceed two hundred and fifty thousand dollars (\$250,000) only if each of the following conditions is met:

- (a) the Board 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 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.

(8) 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

LOAN PORTFOLIO MANAGEMENT

(1) The Board shall, within forty-five (45) 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, including global cash flow analysis as needed;

- (c) procedures for an annual review process and systems to monitor existing credits for deterioration in primary and secondary sources of repayment.

(2) Upon completion, a copy of the program shall be forwarded to the Assistant Deputy Comptroller.

(3) Within forty-five (45) 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) statistical records that will serve as a basis for identifying sources of problem loans and leases by industry, size, collateral, division, group, indirect dealer, and individual lending officer;
- (c) previously charged-off assets and their recovery potential;
- (d) compliance with the Bank's lending policies and laws, rules, and regulations pertaining to the Bank's lending function;
- (e) adequacy of credit and collateral documentation; and
- (f) concentrations of credit.

(4) Beginning June 30, 2009, 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; and
- (g) 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.

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

ARTICLE V

APPRAISALS OF REAL PROPERTY

- (1) Within sixty (60) days, the Board shall engage the services of an independent, professionally certified, or licensed appraiser(s) to provide:
 - (a) a written or updated appraisal, in accordance with 12 C.F.R. Part 34, for each parcel of real property that represents primary collateral behind any extension of credit where:

(i) the loan was criticized in the ROE or by the Bank's internal loan review, and the most recent independent appraisal is more than twelve (12) months old; or

(ii) accrued interest or loan fees have been or will be added to the outstanding principal balance, and the most recent independent appraisal is more than six (6) months old.

(b) a written appraisal on each parcel of Other Real Estate Owned where it is needed to bring the Bank into conformity with the provisions of 12 C.F.R. Part 34.

(2) The Board shall specifically instruct the appraiser(s) to comply with the requirements of 12 C.F.R. Part 34. The details surrounding any and all other instructions given to the appraiser(s) by the Bank, whether written or oral, shall be provided to the Assistant Deputy Comptroller for review prior to the appraiser(s) undertaking the actual appraisals.

(3) All such appraisals shall be completed within one hundred and twenty days (120) days, and certification by the Board attesting to the completion of the appraisals shall be forwarded to the Assistant Deputy Comptroller within thirty (30) days of completion.

(4) Within sixty (60) 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 ongoing Bank adherence to the requirements of 12 C.F.R. Part 34 – Real Estate Appraisal Process. Additionally, the Board should ensure adherence to adequate appraisal review policies and procedures that are essential for prudent underwriting and risk determination.

ARTICLE VI

ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) 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 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 of the Comptroller’s Handbook and OCC Bulletin 2006-47 “*Interagency Policy Statement on the Allowance for Loan and Lease Losses*”, and shall focus particular attention on the following factors:

- (a) support for qualitative factors;
- (b) analyses and support for the amount of impairment on commercial real estate loans;
- (c) an estimate of inherent loss exposure on each significant credit equal to or greater than \$500,000 ; and
- (d) loan loss experience;

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

ARTICLE VII

LOAN REVIEW CONSULTANT

(1) Within forty-five (45) days, the Board shall 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) Prior to the appointment or employment of any individual to this loan review consultant or entering into any contract with a consultant, the Board shall submit the name and qualifications of the proposed consultant and the proposed terms of the scope, frequency and coverage to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection.

(3) Before terminating the 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.

(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/her review and act on any such information or authority within ninety (90) days.

ARTICLE VIII

LOAN WORKOUT DEPARTMENT

(1) Within ninety (90) days, the Board shall establish a Loan Workout Department for the purpose of restoring and reclaiming classified assets, consistent with OCC Banking Circular 255, including commercial real estate loans.

(2) Within ninety (90) days, the Board shall identify and employ an individual with demonstrated experience and skills in managing a bank workout program to manage the Loan Workout Department. This individual shall report to the Chief Executive Officer of the Bank and shall be independent of the Bank's credit origination function.

(3) Prior to the appointment or employment of any loan workout specialist, the Board shall submit the name and qualifications of the proposed individual to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection.

(4) The requirement to submit information and the provision for a prior 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.

(5) The Loan Workout Department shall take all steps necessary to improve the operation of the Bank's workout function including, but not limited to:

- (a) the establishment of policies and procedures to distinguish assets that shall be managed by the Loan Workout Department from assets that shall be managed by the originating unit;

- (b) the establishment of policies and procedures to require assets that remain with the originating unit are managed according to the standards of the Loan Workout Department;
 - (c) the development and implementation of management information systems to track workloads and staffing requirements within the Loan Workout Department; and
 - (d) the development and implementation of management information systems to measure the success of workout activities.
- (6) The Board shall ensure that the Loan Workout Department receives staffing and funding support necessary to maintain its sound operation.

ARTICLE IX

PROGRESS REPORTING - QUARTERLY

- (1) The Board shall submit quarterly progress reports to the Assistant Deputy Comptroller, North Florida Field Office, 8375 Dix Ellis Trail, Suite 403, Jacksonville, Florida 32256. 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 September 30, 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 X

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) 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

6/9/09

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/
Russell Barnes

6/9/09
Date

/S/
W. Janson Davis

6/9/09
Date

/S/
Jeffrey Stalnaker, MD

6/9/09
Date

/S/
Carolyn Storey

6/9/09
Date

/S/
Michael Storey

6/9/09
Date
