

AGREEMENT BY AND BETWEEN  
The First National Bank of Layton  
Layton, Utah  
and  
The Comptroller of the Currency

The First National Bank of Layton, Layton, Utah (“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 July 9, 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;and

- (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 to determine adequacy of global cash flow;
  - (ii) minimum analysis and documentation for evaluations used in lieu of appraisals;
  - (iii) obtain current, verified financial information prior to any loan origination or renewal; and
  - (iv) the amount of pre-leasing required for loans used to construct non-owner occupied commercial real estate and the amount of pre-solds required for development loans.
- (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) timelines and triggers for development and construction credits;
  - (ii) periodic, meaningful, well-documented, inspections are performed on all construction projects and advances are compared against inspections on a line item basis;
  - (iii) obtain updated appraisals/evaluations for all construction or development loans in distressed markets;

- (iv) draws requests are advanced in accordance with construction progress and budget;
  - (v) documentation of project completion versus amount advanced is maintained;
  - (vi) lien waivers are obtained from contractors and sub-contractors; and
  - (vii) documentation of borrower's hard equity (amount and type) is required for construction and development loans.
- (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' accountability for failing to appropriately and timely risk rate loans and or/place loans on nonaccrual;
  - (iii) loan officers are accountable to consistently determine the creditworthiness of guarantors through robust analysis of the guarantors' global financial condition (type, amount and liquidity) and other sources of cash flow, direct and contingent liabilities;
- and

- (iv) consideration of loan officer failure to properly risk rate loans and determine creditworthiness of guarantors in periodic performance reviews and compensation.
- (e) procedures to ensure that guarantor support for commercial loans is analyzed, documented and tracked:
  - (i) training to ensure compliance with this Paragraph; and
  - (ii) documentation provided in a monthly report to the Board of Directors and the OCC regarding the status of construction and A & D loan portfolio. The report should include, at a minimum:
    - (A) a list of completed construction projects and the status of sale of property or permanent financing;
    - (B) number and volume of loans that are over advanced;
    - (C) number and volume of loans requiring the advancement of additional funds and why additional funds are required;
    - (D) number and volume of any grade changes and why grade changes occurred; and
    - (E) monthly report of loans with advances in excess of line item budget or percentage completed.

(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;
- (l) historical and industry average loss that should be applied to each category of loans and on non guaranteed portions of loans;
- (m) maintain a separate liability account for off balance sheet items; and
- (n) maintain documentation of the analysis of any impaired loans including the amount of the impairment.

(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

### 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 nine percent (9%) 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 VI

### EXTERNAL LOAN REVIEW

(1) Within thirty (30) days of the date of this Agreement, the Board shall employ a qualified consultant to perform an asset quality review of the Bank. The external loan review shall provide for a written report to be filed with the Board and shall use a loan and lease grading

system consistent with the guidelines set forth in Rating Credit Risk of the *Comptroller's Handbook*. Such a report shall, at a minimum, include comments and conclusions regarding:

- (a) current financial information on principals and guarantors;
- (b) overall quality of the loan and lease portfolios;
- (c) the identification and considerations of new appraised values or other valuations;
- (d) project performance and payment performance;
- (e) maturity dates on loans;
- (f) interest reserves;
- (g) extensions or modifications to original loan terms;
- (h) collateral perfection;
- (i) lien positions; and
- (j) loans and leases not in conformance with the Bank's loan policy, and exceptions to the Bank's loan policy.

(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 to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection. After the Assistant Deputy Comptroller has advised the Bank that there is no supervisory objection to the Loan Policy, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the Loan Policy.

## ARTICLE VII

### 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 13, 2008

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

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Date



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David E. Simmons

/s/

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Catherine W. Smith

/s/

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Sharman R. Stevenson

/s/

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Nephi M. Voge

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Date

8/13/08

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Date

8/13/08

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Date

8/13/08

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Date