

#2010-0021

AGREEMENT BY AND BETWEEN
BNC National Bank
Phoenix, AZ
and
The Comptroller of the Currency

BNC National Bank, Phoenix, AZ (“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 and investment portfolio management 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), 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
Minneapolis Field Office
222 S. Ninth Street, Suite 800
Minneapolis, MN 55402

ARTICLE II

MONITORING OF CREDIT EXCEPTIONS

(1) The Board shall, within sixty (60) days, develop, implement, and thereafter ensure Bank adherence to a written program to improve the Bank's identification and monitoring of credit and underwriting exceptions to the loan policy. The program shall include, but not be limited to:

- (a) procedures for the reporting, documenting, and explaining of policy exceptions on loans in the loan approval process;
- (b) policy limits on all credit and underwriting exceptions in aggregate as well as under specific type of exceptions; and

- (c) tracking reports to monitor the aggregate number of underwriting and credit exceptions to bank policy.

(2) Effective immediately, if policy limits adopted pursuant to Paragraph (1) of this Article are exceeded, the Board must promptly approve a written plan to guide management's actions and bring levels back to within policy limits.

ARTICLE III

CONCENTRATIONS OF CREDIT & LIMITS ON INVESTMENTS

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written asset diversification program consistent with the risk diversification guidelines set forth in the Loan Portfolio Management and Investment Securities booklets of the Comptroller's Handbook and investment limit guidelines discussed in OCC Bulletin 98-20 (April 27, 1998); OCC Bulletin 2002-19, "Unsafe and Unsound Investment Portfolio Practices" (May 22, 2002); and OCC Bulletin 2009-15, "Risk Management and Lessons Learned" (May 22, 2009); as well as the legal requirements in 12 C.F.R. Part 1. The program shall include, but not necessarily be limited to, the following:

- (a) a review of the balance sheet to identify any concentrations of credit;
- (b) a written analysis of any concentration identified above in order to identify and assess the inherent credit, liquidity, and interest rate risk;
- (c) policy limits and procedures to control and monitor concentration limits;
and
- (d) an action plan approved by the Board to reduce the risk of any concentration deemed imprudent in the above analysis.

(2) The Board shall ensure that future concentrations of credit are subjected to the analysis required by subparagraph (1)(b) and that the analysis demonstrate that the concentration will not subject the Bank to undue credit or interest rate risk.

(3) The Board shall forward a copy of any analysis performed on existing or potential concentrations of credit to the Assistant Deputy Comptroller immediately following the review.

ARTICLE IV

CRITICIZED ASSETS

(1) The Bank shall take immediate and continuing action to protect its interest in those assets criticized in the Report of Examination dated as of June 30, 2009 ("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 individual workout plans 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." Each workout plan shall include, at a minimum:

- (a) an identification of the expected sources of repayment;
- (b) the current 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 a global cash flow analysis of the borrower's repayment ability; and

- (d) actions designed to eliminate the basis of criticism of and protect the bank's interest in the asset, including timeframes for implementing and evaluating the effectiveness of those actions.

(3) Upon adoption, a copy of the workout plans 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, 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 two hundred and fifty thousand dollars (\$250,000);
- (b) management's adherence to the workout plans adopted pursuant to this Article;
- (c) the status and effectiveness of the plans; and
- (d) the need to revise the plans or take alternative action.

(5) 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).

(6) The Bank may extend credit, directly or indirectly, including renewals or extensions, 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 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 plans adopted pursuant to this Article shows that the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

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

ARTICLE V

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) 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 her hand on behalf of the Comptroller.

/s/
Sheila Van Ornum
Assistant Deputy Comptroller
Minneapolis Field Office

1/26/2010
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/ _____ Julie Andresen	1/19/2010 _____ Date
/s/ _____ Gregory K. Cleveland	1/25/2010 _____ Date
/s/ _____ Shawn Cleveland Goll	1/21/2010 _____ Date
/s/ _____ Tim Franz	1/20/2010 _____ Date
/s/ _____ Dave Hoekstra	1/19/2010 _____ Date
/s/ _____ Mark Peiler	1/20/2010 _____ Date
/s/ _____ Scott Spillman	1/25/2010 _____ Date
/s/ _____ B. Timothy Swanson	1/20/2010 _____ Date
_____	_____