

**#2005-60**

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

First National Bank, Torrington, Torrington, 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 her National Bank Examiner, has examined the Bank, and concluded that the Bank has engaged in unsafe or unsound practices and/or violations of law with respect to capital, assets, management, liquidity and compliance.

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 her 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  
Denver Field Office  
1225 17th Street, Suite 450  
Denver, Colorado 80202

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one shall be employees of the Bank. Upon appointment, the names of the members of the Compliance Committee 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 sixty (60) days of the appointment of the Committee and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken to comply with each Article of this Agreement; and
- (b) the results 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.

### ARTICLE III

#### BOARD TO ENSURE COMPETENT MANAGEMENT

(1) Within ninety (90) days, the Board shall review the capabilities of the Bank's management to perform present and anticipated duties and the Board will determine whether management changes should be made, including the need for additions to or deletions from current management.

(2) For lending officers in the positions of vice president and/or branch manager, the Board shall within ninety (90) days assess the experience, other qualifications and performance of each officer compared to the duties, responsibilities, and job description of the officer's position.

(3) If the Board determines that an officer will continue in his or her position but that the officer's depth of skills needs improvement, the Board will within sixty (60) days develop and implement a written program, with specific time frames, to improve the officer's skills. At a minimum the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to perform effectively;
- (b) a plan to improve the effectiveness of the officer;
- (c) objectives by which the officer's effectiveness will be measured; and

- (d) a performance appraisal program for evaluating performance according to the position's description and responsibilities and for measuring performance against the Bank's goals and objectives.

Upon completion, a copy of the written program shall be submitted to the Assistant Deputy Comptroller.

#### ARTICLE IV

##### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by April 30, 2005, and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

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

(2) The requirement in this Agreement to meet and maintain a specific capital level means that the Bank cannot be deemed to be "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).

#### ARTICLE V

##### CAPITAL/STRATEGIC PLAN

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written capital and strategic plan for the Bank covering at least a three-year period. The 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, market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives and, at a minimum, include:

- (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements in Article IV;
- (b) projections for growth in calendar year 2005 that do not exceed 5% of total assets from the period December 31, 2004 to December 31, 2005;
- (c) projections for 2006 and 2007 growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
- (d) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
- (e) a dividend policy that permits the declaration of a dividend only:
  - (i) when the Bank is in compliance with its approved capital program;
  - and
  - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60;
- (f) the development of strategic goals and objectives to be accomplished over the short and long term;
- (g) 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;
- (h) control systems to mitigate risks associated with planned new products, markets, growth, or any proposed changes in the Bank's operating environment;

- (i) 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 determination of no supervisory objection. After the Assistant Deputy Comptroller has advised the Bank that it does not take supervisory objection to the strategic plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the capital/strategic plan.

## ARTICLE VI

### LIQUIDITY

(1) The Board shall immediately increase the liquidity of the Bank to a level that is sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base.

(2) The Board shall review the Bank's liquidity on a monthly basis, including contingent funding sources. Such monthly reviews shall consider:

- (a) identification of current liquidity levels;
- (b) projected sources and uses of liquidity;
- (c) the amount and type of loan commitments and standby letters of credit;
- (d) an analysis of the current and continuing availability and volatility of present funding sources;
- (e) limitations on the volume of brokered deposits;
- (f) identification of potential adverse conditions that could strain liquidity and funding;

- (g) the viability and availability of alternative funding sources for unforeseen liquidity needs;
- (h) the impact to earnings and capital of various funding sources; and
- (i) timeframes and decision authority for implementing contingency funding plans.

## ARTICLE VII

### EXTERNAL LOAN REVIEW

(1) The Board shall within sixty (60) days identify and contract with a sufficiently experienced and qualified individual or firm to ensure a timely and independent review of the Bank's loan portfolio.

(2) Within one hundred twenty (120) days, the Board shall ensure that the above-referenced individual or firm conducts such review to assure the identification and categorization of problem credits. The contract shall provide for a written report to be filed with the Board after the review, which shall use a loan grading system consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the Comptroller's Handbook. Such report shall, at a minimum, include conclusions regarding:

- (a) the overall quality of the loan and lease portfolios;
- (b) the identification, type, rating, and amount of problem loans and leases;
- (c) the identification and amount of delinquent loans and leases;
- (d) credit and collateral documentation exceptions;
- (e) the identification and status of credit related violations of law, rule or regulation; and

- (f) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (b) through (e) of the Article;

## ARTICLE VIII

### LENDING POLICY

(1) Within sixty (60) days, the Board shall review and revise the Bank's written loan policy. In revising this policy, the Board shall refer to the Loan Portfolio Management booklet, A-LPM, of the Comptroller's Handbook. This policy shall incorporate, but not necessarily be limited to, the following:

- (a) a description of acceptable types of loans;
- (b) a provision that current and satisfactory credit information will be obtained on each borrower;
- (c) standards for obtaining current and satisfactory collateral valuations;
- (d) maturity scheduling related to the anticipated source of repayment, the purpose of the loan, and the useful life of the collateral;
- (e) maximum ratio of loan value to appraised value or acquisition costs of collateral securing the loan;
- (f) collection procedures, to include follow-up efforts, that are systematically and progressively stronger;
- (g) a definition of the Bank's trade area;
- (h) a limitation on the type and size of loans that may be made by loan officers without prior approval by the Board or a committee established by the Board for this purpose;

- (i) a requirement that all credits that deviate from the Bank's normal course of business, including all credits that deviate from the Bank's written strategic plan or are outside of the bank's defined trade area in (g) above, receive the prior approval of the Board, or a committee thereof; and
- (j) guidelines for periodic review of the Bank's adherence to the revised lending policy.

(2) Upon adoption, the Board shall establish requirements for all new and renewed loans that have loan officer certification of compliance with the loan policy, or if exceptions exist, that they are reported in the credit presentation, and approved by the appropriate lending committee authority.

(3) Upon adoption, the policy shall be implemented, the Board shall thereafter ensure Bank adherence to the policy, and a copy of the policy shall be forwarded to the Assistant Deputy Comptroller for review.

## ARTICLE IX

### CREDIT AND COLLATERAL EXCEPTIONS

(1) Within ninety (90) days, the Board shall obtain current and satisfactory credit information on all loans lacking such information, including those listed in the Report of Examination of the Bank that commenced on November 24, 2004 ("ROE"), in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(2) Within ninety (90) days the Board shall ensure proper collateral documentation is maintained on all loans and correct each collateral exception listed in the ROE, in any

subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

## ARTICLE X

### 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 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." (in a format similar to Appendix A, attached hereto). 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 seventy-five thousand dollars (\$75,000) 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, 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 seventy-five thousand dollars (\$75,000);
- (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) 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 seventy-five thousand (\$75,000) 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.

(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 XI

### 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 booklet, A-ALLL, of the Comptroller’s Handbook, and shall focus particular attention on the following factors:

- (a) results of the Bank's internal loan grading decisions;
- (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; and
- (g) present and prospective economic conditions.

(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 XII

### VIOLATIONS OF LAW

(1) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule or regulation cited in the ROE and in any subsequent Report of Examination. The quarterly progress reports required by Article XIII of this Agreement shall include the date and manner in which each correction has been effected during that reporting period.

(2) Within ninety (90) 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 Bank adherence to general procedures addressing compliance management that incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

## ARTICLE XIII

### PROGRESS REPORTING - MONTHLY/QUARTERLY

(1) The Board shall submit quarterly progress reports to the Assistant Deputy Comptroller, Denver Field Office, 1225 17th Street, Suite 450, Denver, Colorado 80202. These reports shall set forth in detail:

- (a) actions taken since the prior progress report 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 should also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the ROE or in any future Report of Examination.

(3) The first progress report shall be submitted for the period ending April 30, 2005 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 XIV

##### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank, or requires an extension of any timeframe within this Agreement, the Board shall submit a written request to the Assistant Deputy Comptroller asking for relief.

(2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the Assistant Deputy Comptroller to exempt the Bank from any provision,

or that require an extension of any timeframe within this Agreement. All such requests shall be accompanied by relevant supporting documentation.

(3) The Assistant Deputy Comptroller's decision in granting the request is final and not subject to further review.

## ARTICLE XV

### CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or prior 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 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 OCC 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 her 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 Comptroller 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 her 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/ Karen M. Boehler*

\_\_\_\_\_  
Karen M. Boehler  
Assistant Deputy Comptroller  
Denver Field Office

*4/12/05*

\_\_\_\_\_  
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.

Signed _____ Bruce Batt	4-12-05 _____ Date
Signed _____ Paul Covello	4-12-05 _____ Date
Signed _____ Larry McCormick	4-12-05 _____ Date
Signed _____ Jack Ochsner	4-12-05 _____ Date
Signed _____ Thomas H. Olson	4-12-05 _____ Date
Signed _____ Tom Olson, Jr.	4-12-05 _____ Date
Signed _____ Michael Warren	4-12-05 _____ Date
_____ _____	_____ _____ Date
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_____ _____	_____ _____ Date