

AGREEMENT BY AND BETWEEN  
The First National Bank of Fleming, Fleming, Colorado  
and  
The Comptroller of the Currency

The First National Bank of Fleming, Fleming, Colorado (“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 determined that the Bank has engaged in unsafe and unsound banking practices relating to its Board and management oversight, credit administration, and capital and strategic planning.

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 not be construed to be a “written agreement, order, or capital directive” within the meaning of 12 C.F.R. § 6.4.

## **Article II**

### **Compliance Committee**

(1) Within five (5) days 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 employees of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)). 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.

(2) The Compliance Committee shall be responsible for monitoring and coordinating the Bank’s adherence to the provisions of this Agreement and shall meet at least monthly.

(3) By no later than December 31, 2010, and by the end of every calendar month 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 provide a summary report of the progress reached in attaining compliance with each Article of this Agreement to the Assistant Deputy Comptroller within thirty (30) days of the end of each calendar quarter.

(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

(6) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policies, procedures and programs required by this Agreement.

### **Article III**

#### **Capital and Strategic Plan**

- (1) Effective immediately, the Bank shall only declare dividends when:
- (a) the Bank is in compliance with the Bank's Three-Year Plan as described below;
  - (b) the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
  - (c) the Bank has received a prior written determination of no supervisory objection from the Assistant Deputy Comptroller.
- (2) Within ninety (90) days of this Agreement, the Board shall develop a written strategic plan for the Bank covering at least the next three years (hereafter the "Bank's Three-Year Plan"), complete with specific time frames that incorporate the strategic and other requirements of this Article. A copy of the Bank's Three-Year Plan shall be forwarded to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection.

(3) The Bank's Three-Year Plan shall establish objectives and projections for the Bank's overall risk profile, earnings performance, growth expectations, balance sheet mix, off-balance sheet activities, liability structure, capital and liquidity adequacy, product line development and market segments that the Bank intends to promote or develop, together with specific strategies to achieve those objectives, that are specific, measurable, verifiable, and, at a minimum, address or include:

- (a) an assessment of the Bank's present and future operating environment that establishes measurable goals and objectives for both the short and long term;
- (b) an evaluation of staffing to determine the adequacy of expertise to accomplish long and short term goals and the development of a plan to attain any missing expertise through training or outside resources;
- (c) specific plans for monitoring and reduction of problem assets and ensure portfolio and operational diversification;
- (d) a policy that precludes the Bank from offering or introducing any new products without receiving a prior no-supervisory objection from the Assistant Deputy Comptroller;
- (e) specific plans for the maintenance of adequate capital and sufficient to be well capitalized under 12 C.F.R. Part 6 and that includes primary and secondary sources and timing to meet current and future needs;
- (f) a dividend policy that only permits the declaration of a dividend in accordance with Paragraph (1) of this Article;

- (g) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the next three years that shall address or include consideration of the requirements of this Article;
  - (h) systems to monitor the Bank's progress in meeting the plan's goals and objectives; and
  - (i) an annual review with appropriate revisions and adjustments to the plan.
- (4) 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 Bank's Three-Year Plan.

#### **Article IV**

##### **Credit Underwriting and Administration**

- (1) Within ninety (90) days of this Agreement, the Board shall submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a program (including revisions to policies and procedures) designed to improve the Bank's credit risk management and administration practices. The program shall include at a minimum, provisions requiring:
- (a) guidelines addressing the allowance of a loan extension or restructure that includes minimum repayment periods by collateral type, and collateral and cash flow coverage requirements.
  - (b) procedures to ensure that the Bank does not grant, extend, renew, alter or restructure any loan, participation purchased or other extension of credit equal to or exceeding fifty thousand dollars (\$50,000), without:

- (i) documenting the specific reason or purpose for the extension of credit;
  - (ii) identifying the expected source of repayment in writing;
  - (iii) structuring the repayment terms to coincide with the expected source of repayment and the useful life of the collateral;
  - (iv) obtaining current and satisfactory credit information, including performing and documenting analysis of credit information and a detailed cash flow analysis of all expected repayment sources, including global cash flow analysis, to include all direct and indirect obligations and personal expenses;
  - (v) providing an accurate risk assessment grade and proper accrual status for each credit;
  - (vi) documenting the value of collateral, with adequate supporting material including a current appraisal or evaluation as appropriate, and properly perfecting the Bank's lien on it where applicable;
  - (vii) obtaining loan curtailment or re-margining as necessary to ensure the Bank's collateral position is adequate; and
  - (viii) obtaining the written approval of the Bank's Loan Committee or Board;
- (c) procedures to ensure that monthly exception reports are accurate and that employees and officers are held accountable for non-compliance with the Bank's loan policy and other underwriting requirements;

- (d) procedures to ensure that loans are properly monitored to include periodic receipt, analysis and documentation of sufficient financial and operating information to measure and monitor the borrower's and guarantor's financial condition and repayment ability;
- (e) the establishment of criteria for obtaining updated appraisals, new appraisals, and evaluations, in accordance with the provisions of 12 C.F.R. § 34;
- (f) procedures to ensure that the renewal, grant, purchase, assumption, or acquisition of any loan participation is underwritten and monitored in a manner that is consistent with safe and sound banking practices, the guidelines set forth in Banking Circular 181 (Revised), dated August 2, 1984, and the requirements of 12 C.F.R. Part 34, to include a sound review of any appraisal of collateral; and
- (g) procedures to ensure that troubled debt restructures are accurately reported in the Bank's Consolidated Report of Condition ("Call Report").

(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) The Board shall take the necessary steps to ensure that current and satisfactory credit information is maintained on all loans. Within thirty (30) days of notification, the Board shall ensure that the Bank obtains any missing credit information described in the Report of Examination conducted as of June 30, 2010 (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.

(4) The Board shall take the necessary steps to ensure that proper collateral documentation is maintained on all loans. Within thirty (30) days of notification, the Board shall ensure that the Bank obtains any missing collateral documentation described 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 V**

### **Concentrations of Credit**

(1) Within ninety (90) days 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 diversify the Bank's assets consistent with OCC Banking Circular 255 and the "Concentrations of Credit" booklet of the *Comptroller's Handbook (Section 216)*. 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 of credit identified above to identify and assess the inherent credit, liquidity, and interest rate risk;
- (c) policies and procedures to control and monitor concentrations of credit that include at a minimum, monthly monitoring by the Board of concentration reports that stratify the loan portfolio by product type, locality and other meaningful measures;

- (d) an action plan approved by the Board to reduce the risk of any concentration deemed imprudent in the above analysis; and
- (e) a Board policy that requires a detailed analysis and written support to conclude that any concentration limit increase will not subject the Bank to undue credit or interest rate risk before the Board may approve such increase.

(2) For purposes of this Article, a concentration of credit is as defined in the “Loan Portfolio Management” booklet of the *Comptroller’s Handbook*.

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

(4) 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.

## **Article VI**

### **Criticized Assets**

(1) Effective as of the date of this Agreement, the Board 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 of this Agreement, the Board shall prepare, implement and thereafter ensure adherence to a written program designed to reduce the Bank’s criticized assets

(the “Problem Assets Program”). The Problem Assets Program shall include or address the following matters:

- (a) aggregate reporting of criticized asset levels by type to the Board or a designated committee thereof every month; and
- (b) specific plans for the reduction of criticized assets by asset type with target reductions by month.

(3) The Board’s compliance with Paragraph (2) of this Article shall include the development of procedures for the monthly submission and review of problem asset reports for all criticized credit relationships (including participations purchased) and Other Real Estate Owned (“OREO”) totaling fifty thousand dollars (\$50,000) or above, that require, at a minimum, analysis and documentation of the following:

- (a) an identification of the expected sources of repayment;
- (b) the current appraised value of supporting collateral and the position of the Bank’s lien on such collateral where applicable as well as other necessary documentation to support the collateral valuation;
- (c) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations;
- (d) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment;
- (e) trigger dates for borrower actions or for loan officers to reassess the strategy and enact collection plans;

- (f) specific action plans and trigger dates for risk rating changes and documentation of the analysis and reasoning to support the current risk rating; and
- (g) a determination of whether the loan is impaired and the amount of the impairment, consistent with Accounting Standards Codification 310-10 (formerly known as FASB Statement of Financial Accounting Standards No. 114).

(4) 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 required by this Article.

(5) A copy of each problem asset report relating to criticized credit relationships (including participations purchased) and OREO totaling fifty thousand dollars (\$50,000) or above prepared during the last month of each quarter end (e.g., March, June, September, December) along with any Board comments regarding the effectiveness of the effort to eliminate the weaknesses in each credit or to dispose of the OREO, shall be submitted to the Assistant Deputy Comptroller within thirty (30) days of each calendar quarter end, with the first set of reports due no later than January 31, 2011.

(6) Effective as of the date of this Agreement, the Bank may not 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 equal or exceed fifty thousand dollars (\$50,000), unless each of the following conditions is met:

- (a) the Board or a designated committee thereof 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 Board or a designated committee thereof approves the credit extension and documents in writing, the reasons that such extension is necessary to promote the best interests of the Bank; and
- (b) the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

(7) Copies of best interest statements prepared in response to the requirements of Paragraph (6) of this Article shall be maintained in the minutes to the Board of Director meetings and in the relevant credit file(s).

## **Article VII**

### **Other Real Estate Owned**

(1) Within sixty (60) days of this Agreement, the Board shall revise the Bank's policies and procedures to ensure the Bank obtains real estate appraisals and evaluations of its OREO in compliance with 12 C.F.R. Part 34, Advisory Letter 2003-9, OCC Bulletin 2005-6, and safe and sound banking practices, and appropriately disposes of OREO, to include at a minimum:

- (a) the development of procedures to ensure that appraisals, updates and evaluations are the appropriate type and ordered in a timely manner;
- (b) procedures to ensure that evaluations are documented in writing and contain adequate support of the derived value; and

- (c) written documentation and retention of OREO disposition plans and sales efforts in each respective OREO file.

## **Article VIII**

### **Credit Risk Ratings and Nonaccrual Recognition**

(1) Within sixty (60) days of this Agreement, the Board shall take the necessary steps to ensure that the risk associated with the Bank's loans is properly reflected and accounted for on the Bank's books and records, to include, at a minimum, provisions requiring that:

- (a) the Bank's loans and other assets are appropriately and timely risk rated and 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*, and *OCC Bulletin 2000-20 Uniform Retail Classification Guidelines*;
- (b) the Bank's loans and other assets are timely placed on nonaccrual by the lending officers in accordance with the guidelines set forth in the Call Report;
- (c) the lending staff receive sufficient training with respect to the application of Subparagraphs (a) and (b) of this Article;
- (d) loan officers are accountable for failing to appropriately and timely risk rate and/or place loans on nonaccrual; and
- (e) loan officer failure to properly risk rate and/or place loans on nonaccrual is considered in periodic performance reviews and compensation.

## **Article IX**

### **External Loan Review**

(1) Within sixty (60) days of this Agreement, the Board shall employ a qualified consultant to perform periodic (at least semi-annually) asset quality reviews of the Bank's loan portfolio. The scope of the external loan review shall provide for a written report to be filed with the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the Comptroller's Handbook. Such reports shall, at a minimum, include comments and conclusions regarding:

- (a) the identification, type, rating, and amount of problem loans and leases;
- (b) the identification and amount of delinquent and nonaccrual loans;
- (c) the identification/status of credit related violations of law or regulation;
- (d) loans not in conformance with the Bank's lending policies;
- (e) credit underwriting and documentation exceptions;
- (f) credit analysis and documentation of such;
- (g) accuracy of internal risk ratings;
- (h) overall credit administration practices; and
- (i) completeness and effectiveness of problem loan workout plans.

(2) Prior to the appointment or employment of any individual as loan review consultant or entering into any contract with any consultant, the Board shall submit the name and qualifications of the proposed consultant and the proposed scope and terms of employment to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection. After the OCC has advised the Bank that it does not take supervisory objection to the loan

review consultant or the scope of the review, the Board shall immediately engage the loan review consultant pursuant to the proposed terms of the engagement.

(3) The Board or a designated committee shall review the independent loan review reports and ensure that, if appropriate, immediate, adequate, and continuing remedial action, is taken upon the findings noted in the reports.

(4) A copy of the reports submitted to the Board, as well as documentation of the action taken by the Bank to collect or strengthen assets identified as problem credits, shall be maintained in the books and records of the Bank.

(5) The Bank shall not terminate the consultant's asset quality review services without a prior written determination of no supervisory objection from the Assistant Deputy Comptroller.

## **Article X**

### **Allowance for Loan and Lease Losses**

(1) Within sixty (60) days of this Agreement, the Board shall revise, adopt, implement, and thereafter ensure adherence to written policies and procedures for maintaining an appropriate Allowance for Loan and Lease Losses ("Allowance") in accordance with GAAP. The Allowance policies and procedures shall be consistent with the guidance set forth in the Federal Financial Institutions Examination Council's "Interagency Policy Statement on the Allowance for Loan and Lease Losses" dated December 13, 2006 (OCC Bulletin 2006-47), and July 20, 2001 (OCC Bulletin 2001-37), and shall at a minimum include:

- (a) procedures for determining whether a loan is impaired and measuring the amount of impairment, consistent with Accounting Standards Codification

310-10 (formerly known as FASB Statement of Financial Accounting Standards No. 114);

- (b) procedures for segmenting the loan portfolio and estimating loss on groups of loans, consistent with Accounting Standards Codification 310-10 and 450-20 (formerly known as FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies);
- (c) procedures for validating the Allowance methodology; and
- (d) procedures to ensure that the estimation of credit losses considers the relevant qualitative and environmental factors, with particular focus on the following:
  - (i) trends in the Bank's internal risk ratings, delinquent and nonaccrual loans;
  - (ii) results of the Bank's external loan review;
  - (iii) concentrations of credit in the Bank;
  - (iv) present and prospective economic conditions; and
  - (v) applicable experience of the Bank's lending staff.

(2) The program shall provide for a process for summarizing and documenting, for the Board's review and approval, the amount to be reported in the Call Reports for the Allowance. Any deficiency in the Allowance shall be remedied in the quarter it is discovered, prior to the filing of the Call Report, 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 XI**

### **Liquidity Management**

(1) Within sixty (60) days of this Agreement, the Board shall revise, adopt, implement, and thereafter ensure adherence to a written liquidity program to ensure the Bank maintains liquidity 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, to include at a minimum:

- (a) policies and procedures to ensure the implementation of adequate liquidity planning tools, to include, a sources and uses report that projects forward for periods of, at a minimum, thirty (30), sixty (60) and ninety (90) days, and uses both a base-case and a stressed-case scenario; and
- (b) a contingency funding plan that ensures the Bank can remain liquidity solvent through stressed environments and that includes, at a minimum:
  - (i) management's best estimate of balance sheet changes that may result from a liquidity or credit event;
  - (ii) specific terms or events that trigger enactment of the plan;
  - (iii) necessary management information systems and reporting criteria for use in crises situations;
  - (iv) management responsibilities for enacting the plan and for taking specific actions once enacted; and
  - (v) prioritization of all sources of funding for the various scenarios including asset side funding, liability side funding, and off-balance sheet funding.

## **Article XII**

### **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 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/

11/19/10

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Karen M. Boehler  
Assistant Deputy Comptroller  
Denver Field Office

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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/

11/19/10

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Paul W. Wernsman

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Date

/s/

11/19/10

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Julius B. Wernsman

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Date

/s/

11/19/10

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Thomas H. Wernsman

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Date

/s/

11/19/10

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Anthony J. Wernsman

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Date

/s/

11/19/10

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Stephen C. Wernsman

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Date