

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION

TALLAHASSEE, FLORIDA

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In the Matter of	)	
	)	
FIRST BANK OF THE PALM BEACHES	)	CONSENT ORDER
WEST PALM BEACH, FLORIDA	)	
	)	FDIC-10-703b
	)	OFR 0785-FI-09/10
(Insured State Nonmember Bank)	)	

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The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for First Bank of the Palm Beaches, West Palm Beach, Florida (“Bank”), under 12 U.S.C. § 1813(q).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation to the Issuance of a Consent Order” (“STIPULATION”), dated December 16, 2010, that is accepted by the FDIC and the Florida Office of Financial Regulation (“OFR”). With this STIPULATION, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation relating to weaknesses in asset quality, management, earnings, capital, liquidity, and sensitivity to market risk, to the issuance of this Consent Order (“ORDER”) by the FDIC and the OFR. The OFR may issue an ORDER pursuant to Chapter 120 and Section 655.033, Florida Statutes (2010).

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and under Chapter 120 and Section 655.033, Florida Statutes, have been satisfied, the FDIC and the OFR hereby order that:

**1. BOARD OF DIRECTORS**

(a) Immediately upon issuance of this ORDER, the Board shall increase its participation in the affairs of the Bank, assuming full responsibility for the approval of sound policies and objectives and for the supervision of all of the Bank's activities, consistent with the role and expertise commonly expected for directors of banks of comparable size. The Board shall prepare in advance and follow a detailed written agenda for each meeting, including consideration of the actions of any committees. Nothing in the foregoing sentences shall preclude the Board from considering matters other than those contained in the agenda. This participation shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: reports of income and expenses; new, overdue, renewal, insider, charged-off, and recovered loans; investment activity; operating policies; and individual committee actions. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

(b) Within 30 days from the effective date of this ORDER, the Board shall establish a Board committee (“Directors’ Committee”), consisting of at least five members, to oversee the Bank’s compliance with the ORDER. Three of the members of the Directors’ Committee shall not be officers of the Bank. The

(c) Within 30 days from the effective date of this ORDER, the Board shall engage an independent third party acceptable to the FDIC and the OFR (collectively, “Supervisory Authorities”) and that possesses appropriate expertise and qualifications to analyze and assess both the Board and management (“Board and Management Review”). The Board and Management Review shall address the Board’s performance, the qualifications of its members, and identifying the education needed to improve the banking knowledge of the directors. The Board and Management Review shall also address the effectiveness of the overall management structure and the qualifications and performance of the individual officers, identified in paragraph 2(a) of the ORDER.

(d) Within 90 days from the effective date of this ORDER, the Board shall receive a written report (“Board and Management Report”) detailing the findings of the Board and Management Review, including any recommended changes to improve the Board and/or management including an educational program for periodic training of each nonofficer member of the Board. Within 30 days of

receipt of the Board and Management Report, the Board will conduct a full and complete review of the Board and Management Report, which review shall be recorded in the minutes of the Board meeting.

(e) Within 30 days of receipt of the Board and Management Report, the Board shall develop a written Board and Management Plan that incorporates the findings of the Board and Management Report, a plan of action in response to each recommendation contained in the Board and Management Report, and a time frame for completing each action. The Board and Management Plan shall also contain a detailed management organizational chart and comprehensive job descriptions for each Bank officer. A copy of the Board and Management Report and Board and Management Plan and any subsequent modification thereto shall be submitted to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment, and after consideration of such comment, the Board shall approve the Board and Management Plan which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank and its directors, officers and employees shall implement and follow the Board and Management Plan and any modifications thereto.

(f) Within 60 days from the effective date of this ORDER, the Board shall develop, adopt, and implement written policies and procedures designed to bring to the attention of each member of the Board conflicts of interest which may exist in approving loans or other transactions in which officers, directors or principal shareholders of the Bank (“Insiders”) are involved. Such policies and procedures shall, at a minimum, ensure that each member of the Board has been apprised of

any potential conflict prior to making a decision, or acting specifically on any loan or other transaction in which Insiders and/or their business associates are, directly or indirectly, involved. The results of any deliberations by the Board regarding potential conflicts shall be reflected in the minutes of its meetings.

**2. MANAGEMENT**

(a) Within 90 days from the effective date of this ORDER, the Bank shall maintain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER. At a minimum, management shall include the following:

(i) a chief executive officer with proven ability in managing a bank of comparable size and in effectively implementing lending, investment and operating policies in accordance with sound banking practices;

(ii) a chief lending officer with a significant amount of appropriate lending, collection, and loan supervision experience, and experience in upgrading a low quality loan portfolio; and

(iii) a chief operating officer with a significant amount of appropriate experience in managing the financial aspects and official reporting of a bank's operations of comparable size and complexity in accordance with sound banking practices.

(b) The qualifications of management shall be assessed on its ability to:

(i) comply with the requirements of this ORDER;

- (ii) operate the Bank in a safe and sound manner;
- (iii) comply with applicable laws and regulations; and
- (iv) restore all aspects of the Bank to a safe and sound condition, including, but not limited to, asset quality, capital adequacy, earnings, management effectiveness, risk management, liquidity and sensitivity to market risk.

(c) During the life of this ORDER, the Bank shall notify the Supervisory Authorities, in writing and within ten business days, of the resignation or termination of any of the Bank's directors or senior executive officers and provide the reason for the resignation or termination of the individual. Prior to the addition of any individual to the Board or the employment of any individual as a senior executive officer or executive officer, as those terms are defined in Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. § 303.101 and Section 655.005, Florida Statutes, the Bank shall comply with the requirements of section 32 of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100-303.104, and Section 655.0385, Florida Statutes, and Rule 69U-100.03852, Florida Administrative Code. The notification shall include a description of the background and experience of the individual or individuals to be added or employed and must be received at least 60 days before such addition or employment is intended to become effective. If the Regional Director or the OFR issues a notice of disapproval pursuant to section 32 of the Act, 12 U.S.C. § 1831i,

**3. CAPITAL**

(a) Within 120 days from the effective date of this ORDER, the Bank shall have Tier 1 Capital in such amount as to equal or exceed eight percent (8%) of its total assets, and shall have Total Risk-Based Capital in such an amount as to equal or exceed twelve percent (12%) of the Bank's total risk-weighted assets.

(b) Thereafter during the life of this ORDER, the Bank shall maintain a Tier 1 Capital Ratio of at least eight percent (8%) and a Total Risk-Based Capital Ratio of at least twelve percent (12%).

(c) The level of Tier 1 Capital to be maintained during the life of this ORDER pursuant to this paragraph shall be in addition to a fully funded allowance for loan and lease losses ("ALLL"), the adequacy of which shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(d) Within 60 days from the effective date of this ORDER, the Bank shall submit to the Supervisory Authorities a written capital plan. Such capital plan shall detail the steps that the Bank shall take to achieve and maintain the capital requirements set forth in paragraphs 3(a) and 3(b) above. In developing the capital plan, the Bank must take into consideration:

- (i) the volume of the Bank's adversely classified assets;
- (ii) the nature and level of the Bank's asset concentrations;
- (iii) the adequacy of the Bank's ALLL;

- (iv) the anticipated level of retained earnings;
- (v) anticipated and contingent liquidity needs; and
- (vi) the source and timing of additional funds to fulfill future capital needs.

In addition, the capital plan must include a contingency plan in the event that the Bank:

- (i) fails to maintain the minimum capital ratios required by this paragraph;
- (ii) fails to submit an acceptable capital plan as required by this paragraph; or
- (iii) fails to implement or adhere to a capital plan to which the Supervisory Authorities have taken no written objection pursuant to this paragraph.

Said contingency plan shall include a plan to sell or merge the Bank. The Bank shall implement the contingency plan upon written notice from the Supervisory Authorities.

(e) Any increase in Tier 1 Capital necessary to meet the requirements of this paragraph may be accomplished by the following:

- (i) sale of common stock; or
- (ii) sale of noncumulative perpetual preferred stock; or
- (iii) direct contribution of cash by the Board, shareholders, and/or parent holding company; or
- (iv) any other means acceptable to the Supervisory Authorities; or

(v) any combination of the above means.

Any increase in Tier 1 Capital necessary to meet the requirements of this paragraph may not be accomplished through a deduction from the Bank's ALLL.

(f) If all or part of any necessary increase in Tier 1 Capital required by this paragraph is accomplished by the sale of new securities, the Board shall forthwith take all necessary steps to adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with the Federal securities laws. Prior to the implementation of the plan and, in any event, not less than fifteen (15) days prior to the dissemination of such materials, in a public offering, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17<sup>th</sup> Street, N.W., Room F-6066, Washington, D.C. 20429, and the OFR, Division of Financial Institutions, 200 East Gaines Street, Tallahassee, Florida 32399-0371, for review. Any changes requested to be made in the plan or materials by the FDIC or the OFR shall be made prior to their dissemination. If the increase in Tier 1 Capital is provided by the sale of noncumulative perpetual preferred stock, then all terms

and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and convertibility factor, shall be presented to the Supervisory Authorities for prior approval.

(g) In complying with the provisions of this paragraph, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities a written notice of any planned or existing development or other changes which are materially different from the information reflected in any offering materials used in connection with the sale of Bank securities. The written notice required by this paragraph shall be furnished within ten (10) days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original offering materials.

(h) For the purposes of this ORDER, the terms "Tier 1 Capital", "total assets", "Total Risk-Based Capital" and "Total Risk-Based Capital Ratio" shall have the meanings ascribed to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325 and Appendix A thereto.

**4. CHARGE-OFF**

While this ORDER remains in effect, the Bank shall, within 30 days from the receipt of any official Report of Examination of the Bank from the FDIC or the OFR, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any asset classified "Loss" and 50 percent of the those classified "Doubtful" unless otherwise approved in writing by the Supervisory Authorities. If an asset is classified "Doubtful", the Bank may, in the alternative,

charge off the amount that is considered uncollectible in accordance with the Bank's written analysis of loan or lease impairment. Such analysis shall be accomplished in accordance with generally accepted accounting principles and the Federal Financial Institutions Examination Council's Instructions for the Reports of Condition and Income, Interagency Statements of Policy on the ALLL, and other applicable regulatory guidance that addresses the adequacy of the Bank's ALLL. Elimination of any of these assets through proceeds of other loans made by the Bank is not considered collection for purposes of this paragraph.

**5. REDUCTION OF CLASSIFIED ASSETS**

(a) Within 60 days from the effective date of this ORDER, the Bank shall formulate its written plan to reduce the Bank's risk exposure in each asset in excess of \$250,000 classified as "Substandard" in the Report of Examination dated July 12, 2010 ("Report"). In developing the plan mandated by this paragraph, the Bank shall, at a minimum, with respect to each adversely classified loan, review, analyze, and document the financial position of the borrower, including source of repayment, repayment ability, and alternative repayment sources, as well as the value and accessibility of any pledged or assigned collateral, and any possible actions to improve the Bank's collateral position.

(b) Within 60 days from the effective date of this ORDER, the Bank shall formulate a written plan to reduce the aggregate balance of assets classified "Substandard" in the Report in accordance with the following schedule:

- (i) within 180 days from the effective date of this ORDER, the Bank shall have reduced the items classified “Substandard” in the Report to 80% of Tier 1 Capital plus the ALLL;
  - (ii) within 360 days from the effective date of this ORDER, the Bank shall have reduced the items classified “Substandard” in the Report to 60% of Tier 1 Capital plus the ALLL;
  - (iii) within 540 days from the effective date of this ORDER, the Bank shall have reduced the items classified “Substandard” in the Report to 50% of Tier 1 Capital plus the ALLL; and
  - (iv) within 720 days from the effective date of this ORDER, the Bank shall have reduced the items classified “Substandard” in the Report to 40% of Tier 1 Capital plus the ALLL.
- (c) Within 60 days from the effective date of this ORDER, the Bank shall submit the plans required in this paragraph to the Supervisory Authorities for review and comment. Within 30 days from the receipt of any comment from the Supervisory Authorities, and after due consideration of any recommended changes, the Bank shall approve the plans, which approval shall be recorded in the minutes of the meeting of the Board. Thereafter, the Bank shall implement and fully comply with the plans. Such plans shall be monitored and progress reports thereon shall be submitted to the Supervisory Authorities at 90-day intervals concurrently with the other reporting requirements set forth in the PROGRESS REPORTS paragraph of this ORDER.

(d) The requirements of this paragraph are not to be construed as standards for future operations. Following compliance with the above reduction schedule, the Bank shall continue to reduce the total volume of adversely classified assets. As used in this paragraph, the word “reduce” means:

- (i) to collect;
- (ii) to charge-off; or
- (iii) to sufficiently improve the quality of assets adversely classified to warrant removing any adverse classification, as determined by the Supervisory Authorities.

**6. RESTRICTIONS ON FUTURE ADVANCES**

(a) Beginning with the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, “Loss” or “Doubtful” and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash of interest due from the borrower) any credit already extended to any borrower.

(b) Additionally, during the life of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Bank that has been classified, in whole or part, “Substandard” and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash of interest due from the borrower) any credit already extended to any borrower.

(c) Paragraphs 6(a) and (b) shall not apply if the Bank's failure to extend further credit to a particular borrower would be detrimental to the best interests of the Bank. Prior to the extension of any additional credit pursuant to this paragraph, either in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by a majority of the Board or a designated committee thereof, who shall certify in writing as follows:

- (i) why the failure of the Bank to extend such credit would be detrimental to the best interests of the Bank;
  - (ii) that the Bank's position would be improved thereby; including an explanatory statement of how the Bank's position would be improved; and
  - (iii) that an appropriate workout plan has been developed and will be implemented in conjunction with the additional credit to be extended.
- (d) The signed certification shall be made a part of the minutes of the Board or its designated committee and a copy of the signed certification shall be retained in the borrower's credit file.

## **7. CONCENTRATIONS OF CREDIT**

Within 60 days from the effective date of this ORDER, the Bank shall perform a risk segmentation analysis with respect to the Concentrations of Credit listed on the Concentrations page of the Report. The Bank should refer to Financial Institution Letter ("FIL")104-2006, dated December 12, 2006, titled *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices*, for information regarding risk segmentation analysis. Concentrations should be identified by product type, geographic

distribution, underlying collateral or other asset groups, which are considered economically related and in the aggregate represent a large portion of the Bank's Total Risk-Based Capital. A copy of this analysis shall be provided to the Supervisory Authorities and the Board shall develop a plan to reduce any segment of the portfolio which the Supervisory Authorities deem to be an undue concentration of credit in relation to the Bank's Total Risk-Based Capital. The plan and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

**8. WRITTEN STRATEGIC/BUSINESS PLAN**

(a) Within 60 days from the effective date of this ORDER, the Bank shall prepare and submit to the Supervisory Authorities for review and comment a written business/strategic plan covering the overall operation of the Bank. At a minimum, the plan shall establish objectives for the Bank's earnings performance, growth, balance sheet mix, liability structure, capital adequacy, and reduction of nonperforming and underperforming assets, together with strategies for achieving those objectives. The plan shall also identify capital, funding, managerial and other resources needed to accomplish its objectives. Such plan shall specifically provide for the following:

- (i) goals for the composition of the loan portfolio by loan type including strategies to diversify the type and improve the quality of loans held;
- (ii) goals for the composition of the deposit base including strategies to reduce reliance on volatile and costly deposits; and

- (iii) plans for effective risk management and collection practices.
- (b) Within 15 days from the receipt of any comments from the Supervisory Authorities, and after due consideration of any recommended changes, the Board shall approve the business/strategic plan, which approval shall be recorded in the minutes of a Board meeting.

**9. PLAN FOR EXPENSES AND PROFITABILITY**

- (a) Within 90 days from the effective date of this ORDER, the Bank shall formulate and implement a written plan to improve and/or sustain Bank earnings for 2011. This plan shall be forwarded to the Supervisory Authorities for review and comment and shall address, at a minimum, the following:
  - (i) goals and strategies for improving and sustaining the earnings of the Bank;
  - (ii) the major areas in, and means by which the Bank will seek to improve the Bank's operating performance;
  - (iii) realistic and comprehensive budgets;
  - (iv) a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections;
  - (v) the operating assumptions that form the basis for, and adequately support, major projected income and expense components; and
  - (vi) coordination of the Bank's loan, investment, and operating policies and budget and profit planning with the funds management policy.
- (b) Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan required by this paragraph and

shall record the results of the evaluation, and any actions taken by the Bank in the minutes of the Board meeting at which such evaluation is undertaken.

(c) Thereafter, the Bank shall formulate such a plan and budget by November 30 of each year. These plans and budgets shall be submitted to the Supervisory Authorities for review and comment by December 15 of each year.

**10. LENDING AND COLLECTION POLICIES**

Within 60 days from the effective date of this ORDER, the Bank shall revise, as necessary, and fully implement its written lending and collection policy to provide effective guidance and control over the Bank's lending function, which implementation shall include the resolution of those exceptions enumerated in the Report. The written lending and collection policy must contain specific guidelines for placing loans on a nonaccrual basis, contain policies and procedures regarding capitalized interest and interest reserve procedures, require a determination that loan officers have the necessary expertise to make, monitor, and service the types and kinds of loans that will be assigned to them, require prior written approval by the Bank's Board for any extension of credit, renewal, or disbursement to insiders of the Bank, and contain guidelines for the issuance of interest-only loans. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policy and its implementation shall be in a form and manner acceptable to the Supervisory Authorities.

**11. ALLOWANCE FOR LOAN AND LEASE LOSSES**

Within 60 days from the effective date of this ORDER, the Board shall review the adequacy of the ALLL and establish a comprehensive policy for determining the adequacy of the ALLL. For the purpose of this determination, the adequacy of the ALLL

shall be determined after the charge-off of all loans or other items classified “Loss”. The policy shall provide for a review of the ALLL at least once each calendar quarter. Said review shall be completed in time to properly report the ALLL in the quarterly Reports of Condition and Income. The review should focus on the results of the Bank's internal loan review, loan and lease loss experience, trends of delinquent and non-accrual loans, an estimate of potential loss exposure of significant credits, concentrations of credit, and present and prospective economic conditions. The review should include a review of compliance with FAS 114 currently codified as ASC 310-10-35, Receivables – Overall – Subsequent Measurement, and FAS 5, currently codified as ASC 450, including the identification of and the appropriate value for collateral dependent loans. The policy shall adhere to the guidance set forth in the FIL 105-2006, dated December 13, 2006, titled *Interagency Policy Statement on the Allowance for Loan and Lease Losses*. A deficiency in the ALLL shall be remedied in the calendar quarter it is discovered, prior to submitting the Reports of Condition and Income, by a charge to current operating earnings. The minutes of the Board meeting at which such review is undertaken shall indicate the results of the review. The Bank's policy for determining the adequacy of the ALLL and its implementation shall be satisfactory to the Supervisory Authorities as determined at their initial review and at subsequent examinations and/or visitations.

**12. ASSET LIABILITY AND FUNDS MANAGEMENT POLICY**

Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement a written asset/liability management policy addressing liquidity, contingent funding, and asset liability management which plan shall include, at a minimum, revisions to address all items of criticism in the Report. The plan shall

incorporate the guidance contained in FIL 84-2008, dated August 26, 2008, entitled *Liquidity Risk Management*. A copy of the plan shall be submitted to the Supervisory Authorities for review and comment. Within 30 days from the receipt of any comments from the Supervisory Authorities, the Bank shall incorporate those recommended changes. Thereafter, the Bank shall implement and follow the plan. Annually during the life of this ORDER, the Bank shall review the plan for adequacy and, based upon such review, shall make appropriate revisions to the plan that are necessary to strengthen the funds management procedures and maintain adequate provisions to meet the Bank's liquidity needs.

**13. INTEREST RATE RISK MANAGEMENT**

Within 60 days from the effective date of this ORDER, the Bank shall develop and implement a written policy for managing interest rate risk in a manner that is appropriate to the size of the Bank and the complexity of its assets. The policy shall comply with the FIL-52-96, *Joint Agency Policy Statement on Interest Rate Risk*, dated July 12, 1996, and the FIL-2-2010, *FFIEC Advisory on Interest Rate Management*, dated January 20, 2010, shall be consistent with the comments and recommendations detailed in the Report and shall include, at a minimum, the means by which the interest rate risk position will be monitored, the establishment of risk parameters, and provision for periodic reporting to management and the Board regarding interest rate risk with adequate information provided to assess the level of risk. Such policy and its implementation shall be satisfactory to the Supervisory Authorities.

**14. SPECIAL MENTION**

Within 90 days from the effective date of this ORDER, the Bank shall correct the cited deficiencies in the loans listed for “Special Mention” in the Report.

**15. AUDITS**

Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a comprehensive written audit program. The policy shall comply with the FIL-21-2003, *Interagency Policy Statement on the Internal Audit Function and its Outsourcing*, dated March 17, 2003, and shall be consistent with the comments and recommendations detailed in the Report. A copy of the audit program shall be submitted to the Supervisory Authorities upon its completion. The Bank shall thereafter implement and enforce an effective system of internal and external audits. The internal auditor shall make written monthly reports of audit findings directly to the Board. The minutes of the meetings of the Board shall reflect consideration of these reports and describe any action taken as a result thereof.

**16. VIOLATIONS OF LAW, REGULATION, AND POLICY**

Within 90 days from the effective date of this ORDER, the Bank shall eliminate and/or correct the violations of law, regulation, and/or statement of policy which are more fully set out in the Report. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws, regulations, and statements of policy.

**17. RESTRICTIONS ON CERTAIN PAYMENTS**

- (a) While this ORDER is in effect, the Bank shall not declare or pay dividends, bonuses, or any other form of payment resulting in a reduction of capital without the prior written approval of the Supervisory Authorities. All

requests for prior approval shall be received at least 30 days prior to the proposed payment declaration date (at least 5 days with respect to any request filed within the first 30 days after the date of this ORDER) and shall contain, but not be limited to, an analysis demonstrating that the proposed payment meets the criteria set forth in Section 658.37, Florida Statutes, and detailing the impact such payment would have on the Bank's capital position, cash flow, concentrations of credit, asset quality and ALLL needs. The Supervisory Authorities will not approve a payment representing a reduction of capital unless the Supervisory Authorities determine that such payment will not have an adverse or unacceptable impact on the Bank's capital position, cash flow, concentrations of credit, asset quality, and ALLL needs.

(b) During the term of this ORDER, the Bank shall not issue or make any distributions of interest, principal or other sums on subordinated debentures, if any, without the prior written approval of the Supervisory Authorities.

**18. BROKERED DEPOSITS**

(a) Throughout the effective life of this ORDER, the Bank shall not accept, renew, or rollover any brokered deposit, as defined by 12 C.F.R. § 337.6(a)(2), unless it is in compliance with the requirements of 12 C.F.R. § 337.6(b) governing solicitation and acceptance of brokered deposits by insured depository institutions.

(b) The Bank shall comply with the restrictions on the effective yields on deposits as described in 12 C.F.R. § 337.6.

**19. NO MATERIAL GROWTH WITHOUT NOTICE**

While this ORDER is in effect, the Bank shall notify the Supervisory Authorities at least 60 days prior to undertaking asset growth to ten percent (10 %) or more per annum or initiating material changes in asset or liability composition. In no event shall asset growth result in noncompliance with the capital maintenance provisions of this ORDER unless the Bank receives prior written approval from the Supervisory Authorities.

**20. PROGRESS REPORTS**

Within 45 days from the end of the first quarter following the effective date of this ORDER, and within 45 days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Reports of Condition and Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Supervisory Authorities have released the Bank in writing from making further reports. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the minutes of the appropriate Board meeting.

**21. DISCLOSURE**

Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER in conjunction with the Bank's next shareholder communication and also in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the

ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Division of Supervision and Consumer Compliance, Accounting and Securities Disclosure Section, 550 17<sup>th</sup> Street, N.W., Room F-6066, Washington, D.C. 20429, and to the OFR, Division of Financial Institutions, 200 East Gaines Street, Suite 624, Tallahassee, FL 32399-0371, at least fifteen (15) days prior to dissemination to shareholders. Any changes requested to be made by the FDIC or the OFR shall be made prior to dissemination of the description, communication, notice, or statement.

The provisions of this ORDER shall not bar, estop, or otherwise prevent the FDIC, the OFR, or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties.

This ORDER shall be effective on the date of issuance.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified, terminated, suspended, or set aside in writing.

Issued Pursuant to Delegated Authority.

Dated this 21st day of December, 2010.

/s/

By: \_\_\_\_\_  
Thomas J. Dujenski  
Regional Director  
Division of Supervision and Consumer Protection  
Atlanta Region  
Federal Deposit Insurance Corporation

The Commissioner of the OFR, having duly approved the foregoing ORDER, and the Bank, through its Board, agree that the issuance of said ORDER by the FDIC shall be binding as between the Bank and the OFR to the same degree and to the same legal effect that such ORDER would be binding if the OFR had issued a separate ORDER that included and incorporated all of the provisions of the foregoing ORDER, pursuant to Chapters 120, 655, and 658, Florida Statutes, including specifically Sections 655.033 and 655.041, Florida Statutes.

Dated this 17th day of December, 2010.

/s/

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Linda B. Charity  
Director  
Division of Financial Institutions  
Office of Financial Regulation  
By Delegated Authority for the Commissioner,  
Office of Financial Regulation