

E5-40 EXCESSIVE AND LUXURY EXPENDITURES

BNCCORP

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INTRODUCTION

BNCCORP, Inc. and its subsidiary bank(s) (“Company”) have adopted the following Excessive and Luxury Expenditures Policy pursuant to Section 111(d) of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009. As a recipient of financial assistance under the Troubled Asset Relief Program (“TARP”), the Company must establish standards for the identification, monitoring, approval and reporting of expenditures on activities that may be deemed excessive and in violation of the Company’s duties under its agreement with the Treasury Department (“Treasury”).

POLICY GUIDELINES

- 1. Statement of Policy** — It is the policy of the Company to establish standards to govern and monitor activities regarding the use of company assets as it relates to staff development, reasonable performance incentives, or similar measures conducted in the normal course of the Company’s business operations.

The Excessive and Luxury Expenditures Policy will seek to achieve the following key elements required to be addressed by the Treasury. Specifically, the Policy will:

- a. Identify the types or categories of expenditures that are prohibited;
- b. Identify the types or categories of expenditures that require prior approval;
- c. Provide reasonable procedures for expenditures requiring prior approval;
- d. Require Principal Executive Officer (“PEO”) and Principal Financial Officer (“PFO”) certification that the approval of any expenditure requiring the prior approval from any Senior Executive Officer (“SEO”) or any executive officer of a substantially similar level of responsibility, or the Company’s Board of Directors (“Board”) (or a committee of the Board), was properly obtained with respect to each such expenditure; and
- e. Mandate accountability for adherence to this policy.

2. Delegation of Authority and Responsibility — The Company has established a TARP Governance Committee (the “TARP Committee”) with ultimate responsibility for the oversight of this policy. The TARP Committee is composed of individuals on the Board’s Compensation Committee which may delegate the implementation of certain administrative, pre-approval and monitoring activities to one or more of the following SEO’s:

- Principal Executive Officer (“PEO”)
- Principal Financial Officer (“PFO”)
- Chief Operating Officer
- Chief Credit Officer
- Chief Investment Officer

3. Applicability – The standards set forth in this Excessive and Luxury Expenditures Policy apply to each and every employee of the Company and each employee is expected to read, understand and comply with the standards set forth in this policy.

Any questions regarding the interpretation or application of the standards contained herein or an employee’s duty under this policy should be directed to the Chief Compliance Officer.

4. General Standards — The standards described below address known categories of activities that have the potential for excessive spending as identified by the Treasury in its interim final rule issued in June 2009 (the “Interim Final Rule”).

The following activities are considered within the scope of the Excessive and Luxury Expenditures Policy and to the extent such expenditures are not reasonable expenditures for staff development, reasonable performance incentives, or other similar reasonable measures conducted in the normal course of the Company’s business operations, certain expenditures may be deemed excessive:

- Entertainment or events;

- Office and facility renovations;
- Aviation or other transportation services; and
- Other similar items, activities, or events for which the Company may reasonably anticipate incurring expenses, or reimbursing an employee for incurring expenses.

5. **Prohibitions** — The reimbursement of any non-business related expenses incurred by Company employees is prohibited under the Excessive and Luxury Expenditures Policy.
6. **Limitations** — The Company will not approve any expenditure unless it is reasonably expected to contribute to staff development, furtherance of the Company’s strategic initiatives, staff retention through reasonable and appropriate performance incentives or in furtherance of some other Company or community objective or goal.

Any questions regarding the appropriateness of expenditures must be directed to one of the SEO’s outlined in Section 2 of this policy.

Entertainment or Events

Entertainment is defined as an activity where an employee, division / business unit manager or executive utilizes company funds for the purposes of business development relating to current or prospective customers, or to further enhance the Company’s marketing efforts.

The Company expects all expenditures incurred to be for Company purposes and for driving business to the bank. Occasional activities such as taking customers or prospects to dinner or other events such as playing golf are a necessary part of the Company’s marketing efforts and are not deemed as ‘entertainment’ or a violation of this policy. These expenditures and their benefit to the Company should be documented.

Events are generally defined as conference attendance, conference sponsorships, community event sponsorships, sporting event sponsorships, and employee gatherings. Employee recognition and holiday parties are part of the Company’s employee appreciation process. These events should be local in geographic nature and reasonable in cost. Conference attendance or sponsorships of any kind must be pre-approved. (See [Appendix A](#) for a sample Pre-Approval Form.)

Office and Facility Renovations

All office and facility renovations over \$5,000 must be submitted in writing by the division / business unit manager, or his designee, and pre-approved by the Chief Operating Officer. (See [Appendix A](#) for a sample Pre-Approval Form.)

Aviation or other Transportation Services

Private aviation expenditures must be submitted in writing by the division / business unit manager, or his designee, and pre-approved by one of the SEO’s outlined in Section 2 of this policy. (See [Appendix A](#) for a sample Pre-Approval Form.)

Any other Activities Deemed Excessive

Any other activities that may be deemed excessive luxury expenditures should be discussed with one of the SEO’s outlined in Section 2 of this policy.

7. **Exceptions** – Exceptions to this policy will only be granted with the approval of two (2) of the CEO's outlined in Section 2 of this policy.
8. **Reporting Requirements** - As required, the Company's Board of Directors ("Board") has formally adopted this Excessive Luxury Expenditures Policy. Any amendments to this policy must be approved by the TARP Committee and submitted to and adopted by the Board. Additionally, the CEO and CFO will, within ninety days of the completion of each fiscal year any part of which is a TARP period, certify that the Company has adopted and maintains an excessive or luxury expenditures policy and has provided this policy to Treasury in each case in accordance with the requirements under the Interim Final Rule.

In accordance with the Interim Final Rule, the Company will initially file this policy with Treasury and the Office of the Comptroller of the Currency and post the text of this policy on its Internet website by September 14, 2009. On an ongoing basis, the Company will file and post the text of amended Excessive Luxury Expenditures Policy with the Treasury and Company's website, respectively, as soon as is practicable after the Board's approval and adoption of the amended policy.

Each member of the Senior Management Committee must sub-certify to the Principal Executive Officer and the Principal Financial Officer no less frequently than quarterly that they have complied with the reporting requirements of this policy. (See [Appendix B](#) for a sample Certification.)

9. **Discipline and Sanctions** – To the extent any employee is deemed to have caused a breach of this policy, the Principal Executive Officer and the Principal Financial Officer will make a determination as to the appropriate discipline, given the facts and circumstances of the breach.

Procedures and Internal Controls— The Chief Executive Officer and Chief Financial Officer are hereby directed to develop and implement such procedures and internal controls as are deemed necessary to ensure compliance with this policy statement and with applicable accounting, financial reporting and regulatory guidelines.

Audit— The audit department shall periodically review compliance with this policy statement and with applicable accounting, financial reporting and regulatory guidelines.

Appendix A

Excessive and Luxury Expenditures Policy Request for Pre-Approval

Entity:

- BNC National Bank
- BNCCORP

Branch:

Name _____

Number _____

Name of Requestor:

Pre-Approval Requested For *(Please check one):*

___ **Conference/Sponsorship*** ___ **Office/Facilities Renovation*** ___ **Private Aviation***

Registration

\$ _____.

Estimated Cost

\$ _____.

Estimated Cost

\$ _____.

Lodging

\$ _____.

***Describe Nature of Event / Renovation/ Aviation (REQUIRED):**

Meals

\$ _____.

Airfare

\$ _____.

Mileage

\$ _____.

Other

\$ _____.

Total:

\$ _____.

Submitted By: _____

Signature

Date

Approved By: _____

Signature

Date

Appendix B

Excessive and Luxury Expenditures Policy Sub-certification of Senior Management

I, _____ the _____ of BNC National Bank., certify, based on my knowledge, that the approval of any expenditure requiring the prior approval from any Senior Executive Officer or any executive officer of a substantially similar level of responsibility, or the Company's Board of Directors (or a committee of the board), as required by the Company's Excessive and Luxury Expenditures Policy, has been properly obtained with respect to each expenditure.

Signature