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Colorado Secretary of State

S.WARD 3:00 P.M.

Proposed Constitutional Amendment for the State of Colorado

To Establish a Publicly-Owned State Bank
To be Numbered as Article X, Section 22

Be it Enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, **add** section 22 to Article X as follows:

Section 22. State-owned bank. (1) Statement of intent. (a) THE STATE OF COLORADO DESIRES TO ESTABLISH A STATE-OWNED BANK AS A TABOR ENTERPRISE, IN ORDER TO STRENGTHEN ITS ECONOMY BY:

- I. KEEPING THE STATE'S DEPOSITS LOCAL IN ITS OWN STATE-OWNED BANK, WORKING FOR THE LOCAL ECONOMY;
- II. ELIMINATING INTEREST AND FEE EXPENSES ASSOCIATED WITH THE USE OF OUT-OF-STATE BANKS;
- III. PROVIDING AN ADDITIONAL SOURCE OF INCOME FOR THE STATE ;
- IV. PROTECTING COLORADO'S ECONOMY FROM THE SYSTEMIC RISKS OF BANKS THAT ARE TOO BIG TO FAIL, OF THE SORT THAT CAUSED THE 2008 GREAT RECESSION; AND
- V. PROTECTING THE STATE'S OWN DEPOSITS AND INVESTMENTS FROM CONFISCATION IN A "BAIL-IN" AS AUTHORIZED BY THE DODD-FRANK ACT OF 2010.

(b) TRUE AND SUSTAINABLE PROSPERITY COMES IN LARGE PART FROM THE CREATION AND MANAGEMENT OF MONEY AND CREDIT IN THE PUBLIC INTEREST. THIS HAS BEEN REPEATEDLY DEMONSTRATED GLOBALLY AND HISTORICALLY, BEGINNING WITH THE PUBLIC CREDIT SYSTEMS OF MANY OF THE ORIGINAL THIRTEEN COLONIES OF THE UNITED STATES. TODAY IN THE U.S. WE HAVE THE MODEL OF THE BANK OF NORTH DAKOTA, WHICH PROTECTED THE STATE'S ECONOMY FROM RECESSION IN 2008-2009. GLOBALLY, HIGHLY SUCCESSFUL PUBLIC BANKING MODELS ARE FOUND IN GERMANY, SOUTH KOREA, JAPAN, COSTA RICA, AND MANY OTHER COUNTRIES; AND IN THE PAST, IN CANADA, FRANCE, AND AUSTRALIA, AMONG OTHERS.

(c) THE SOLE PURPOSE OF THIS AMENDMENT IS TO ESTABLISH A PUBLICLY OWNED STATE BANK AS A TABOR ENTERPRISE THAT EFFECTIVELY SERVES THE PUBLIC INTEREST AND PROMOTES THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO, AS DEFINED IN SUBSECTION (3) OF THIS SECTION.

(2) **Definitions.** AS USED IN THIS SECTION:

(a) "SOUND BANKING PRACTICES" MEANS PRACTICES GENERALLY FOLLOWED BY PUBLIC NON-PROFIT BANKS, SUCH AS THE BANK OF NORTH DAKOTA, THAT ARE OPERATED IN THE PUBLIC INTEREST, AS OPPOSED TO THE FREQUENTLY QUESTIONABLE OR UNLAWFUL PRACTICES OF MAJOR PRIVATE FOR-PROFIT BANKS, WHICH ARE OPERATED PRINCIPALLY IN THE INTERESTS OF THEIR SHAREHOLDERS, WHICH OFTEN CONFLICT WITH THE PUBLIC INTEREST, AND THEREBY CREATE UNREASONABLE RISKS FOR THE ECONOMY OF THE UNITED STATES AND THE STATE OF COLORADO. FOR EXAMPLE, SOUND BANKING PRACTICES INCLUDE, BUT ARE NOT LIMITED TO, THE AVOIDANCE OF INVESTMENTS IN SPECULATIVE INSTRUMENTS SUCH AS DERIVATIVES, CREDIT DEFAULT SWAPS, INTEREST RATE SWAPS, COMMODITIES FUTURES, AND MORTGAGE BACKED SECURITIES.

(b) "SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS" MEANS CONSIDERATIONS FOCUSED ON THE PUBLIC INTEREST, SUCH AS THOSE ENUMERATED IN SUBSECTION (3), PARTICULARLY THOSE OF THE CITIZENS OF THE STATE OF COLORADO.

(c) "STATE PERSONNEL SYSTEM" REFERS TO THE SYSTEM ESTABLISHED UNDER SECTION 13 OF ARTICLE XII OF THE COLORADO CONSTITUTION.

(3) Establishment of state-owned bank. (a) THE STATE OF COLORADO HEREBY ESTABLISHES A BANK TO BE OWNED BY THE STATE OF COLORADO AND OPERATED AS AN ENTERPRISE AS DEFINED IN SECTION 20 (2)(d) OF ARTICLE 10 OF THE COLORADO CONSTITUTION. THE BANK IS AUTHORIZED TO LEND MONEY AT INTEREST OR AT NO INTEREST; TO PROMOTE SUSTAINABLE DEVELOPMENT, COMMERCE, INDUSTRY, AND AGRICULTURE IN THE STATE; TO PROMOTE HOME OWNERSHIP, MAINTENANCE AND CONSTRUCTION OF NEEDED INFRASTRUCTURE, EDUCATION, PUBLIC HEALTH AND SAFETY; AND OTHER PURPOSES THAT SUPPORT THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO. THE BANK SHALL HAVE ALL THE POWERS AND AUTHORITY OF OTHER BANKS CHARTERED BY THE STATE OF COLORADO.

(b) THE BANK SHALL BE AUTHORIZED TO ISSUE REVENUE BONDS IN ORDER TO PROVIDE CAPITALIZATION OR TO SUPPORT ANY OF ITS FACILITIES OR OPERATIONS.

(c) THE BANK SHALL CONSTITUTE AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION SO LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND EACH YEAR RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS PARAGRAPH (c) THE BANK SHALL NOT BE SUBJECT TO ANY PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(d) ALL PROVISIONS OF THIS SECTION 22 ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

(4) Governance of state bank - elected officials. THE BOARD OF DIRECTORS OF THE BANK CONSISTS OF SEVEN MEMBERS WHO SHALL BE ELECTED AS FOLLOWS:

(a) THE SEVEN BOARD MEMBERS SHALL EACH REPRESENT A DISTRICT WHOSE BOUNDARIES SHALL BE THE SAME AS THE SEVEN CONGRESSIONAL DISTRICTS FROM WHICH COLORADO'S SEVEN CONGRESSIONAL MEMBERS ARE ELECTED. IF THE NUMBER OF REPRESENTATIVES FROM COLORADO SHOULD CHANGE TO AN EVEN NUMBER IN THE FUTURE, THE NUMBER OF DISTRICTS FROM WHICH MEMBERS WILL BE ELECTED FROM WILL CHANGE ACCORDINGLY, AND THE GOVERNOR WILL APPOINT ONE ADDITIONAL BOARD MEMBER MAKING UP THE NEW ODD TOTAL NUMBER. BEFORE NEW ELECTIONS ARE HELD USING NEW DISTRICT BOUNDARIES, BOARD MEMBERS WILL FINISH OUT THE REMAINING TWO YEARS OF THEIR FOUR YEAR TERM, BUT THE OTHER BOARD MEMBERS WILL BE REPLACED BY ELECTIONS FROM THE NEW DISTRICTS.

(b) THE INITIAL ELECTION SHALL BE HELD ON THE FIRST TUESDAY IN NOVEMBER, 2017 IN CONJUNCTION WITH THE GENERAL ELECTION, AND INCLUDE CANDIDATES FOR ALL SEVEN DISTRICTS, THREE OF WHOM SHALL BE ELECTED FOR AN INITIAL TERM OF TWO YEARS AND FOUR OF WHOM SHALL BE ELECTED FOR A TERM OF FOUR YEARS. THEREAFTER, THE TERM OF EACH MEMBER SHALL BE FOR FOUR YEARS. EACH ELECTION HELD AFTER THE INITIAL ELECTION SHALL ALSO BE HELD ON THE FIRST

TUESDAY IN NOVEMBER IN ODD-NUMBERED YEARS IN CONJUNCTION WITH THE GENERAL ELECTION. ELECTIONS FOR MEMBERS OF THE BOARD OF DIRECTORS SHALL BE ON A NON-PARTISAN BASIS. POLITICAL PARTIES MAY NOT ENDORSE CANDIDATES FOR THESE POSITIONS.

(c) A CANDIDATE MUST BE A CITIZEN OF THE STATE OF COLORADO FOR AT LEAST FOUR YEARS BEFORE HE OR SHE CAN DECLARE THEIR CANDIDACY AND MUST BE A RESIDENT OF THEIR DISTRICT FOR TWO YEARS PRIOR TO THE DEADLINE FOR CANDIDATE REGISTRATION.

(d) TO BE INCLUDED ON THE BALLOT, CANDIDATES MUST REGISTER WITH THE SECRETARY OF STATE'S OFFICE, WHICH SHALL PROVIDE AN AUTOMATED ONLINE PROCESS THAT INCLUDES THE OPPORTUNITY FOR EACH CANDIDATE TO LIST THEIR QUALIFICATIONS AND REASONS WHY THEY WANT TO SERVE.

(e) IN THE EVENT THAT NO CANDIDATE WITHIN A DISTRICT RECEIVES A MAJORITY OF VOTES FROM THAT DISTRICT, THE SECRETARY OF STATE SHALL SET A RUN-OFF ELECTION BETWEEN THE TWO CANDIDATES RECEIVING THE MOST VOTES. THE RUN-OFF ELECTION MUST BE HELD WITHIN THIRTY DAYS AFTER THE RESULT OF THE INITIAL ELECTION IS CERTIFIED.

(f) THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS AS NECESSARY TO CONDUCT THE ELECTIONS PROVIDED FOR IN THIS SUBSECTION. FUNDS APPROPRIATED FOR THE ELECTION SHALL NOT BE DEEMED TO BE PART OF THE REVENUE OF THE BANK. THE SECRETARY OF STATE SHALL SET AND CONDUCT ALL ELECTIONS FOR THE BOARD OF DIRECTORS OF THE BANK IN ACCORDANCE WITH THIS SUBSECTION 4.

(g) THE BANK SHALL COMMENCE OPERATIONS JANUARY 1, 2018.

(5) Governance of state bank: management, employees, and advisors: (a) THE BOARD OF DIRECTORS SHALL RECEIVE ADVISORY INPUT ON THE GENERAL DIRECTION OF THE BANK FROM A NINE-MEMBER BOARD OF ADVISORS WHOSE MEMBERS REPRESENT A BROAD CROSS-SECTION OF THE STATE INCLUDING BUSINESS AND INDUSTRY, FARMING, FINANCE, EDUCATION, AND LABOR. OF THE NINE, AT LEAST TWO MUST BE OFFICERS OF BANKS WHOSE MAJORITY OF STOCK IS OWNED BY COLORADO RESIDENTS. AT LEAST ONE DIRECTOR MUST BE AN OFFICER OF A STATE-CHARTERED OR FEDERALLY CHARTERED FINANCIAL INSTITUTION. THE GOVERNOR SHALL APPOINT A CHAIRMAN, VICE CHAIRMAN, AND SECRETARY FROM THE ADVISORY BOARD OF DIRECTORS. THE GOVERNOR SHALL APPOINT THE BOARD MEMBERS FOR STAGGERED TERMS OF FOUR YEARS EACH, EXCEPT FOR THE INITIAL APPOINTMENT WHICH SHALL PROVIDE FOUR-YEAR TERMS FOR FIVE MEMBERS AND TWO-YEAR TERMS FOR FOUR MEMBERS, SUBJECT TO CONFIRMATION BY A MAJORITY OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO. VARIOUS GROUPS WITHIN EACH AREA OF INTEREST MAY NOMINATE MEMBERS OF THE BOARD OF ADVISORS IN A MANNER TO BE DETERMINED BY THE GENERAL ASSEMBLY.

(b) AUTHORITY OF THE ADVISORY BOARD OF DIRECTORS. THE ADVISORY BOARD OF DIRECTORS TO THE BANK SHALL:

I. MEET REGULARLY WITH THE MANAGEMENT OF THE BANK TO REVIEW THE BANK'S OPERATIONS TO DETERMINE WHETHER RECOMMENDATIONS SHOULD BE CONSIDERED BY THE BOARD RELATED TO IMPROVED MANAGEMENT PERFORMANCE, BETTER CUSTOMER SERVICE, AND OVERALL IMPROVEMENT IN INTERNAL METHODS, PROCEDURES, AND OPERATING POLICIES OF THE BANK.

II. MAKE RECOMMENDATIONS TO THE BOARD OF DIRECTORS OF THE BANK RELATING TO THE ESTABLISHMENT OF ADDITIONAL OBJECTIVES FOR THE OPERATION OF THE BANK.

III. MAKE RECOMMENDATIONS TO THE BOARD OF DIRECTORS CONCERNING THE APPOINTMENT OF OFFICERS OF THE BANK.

(c) THE BOARD OF DIRECTORS SHALL ALSO RECEIVE REGULAR FINANCIAL REPORTS, NO LESS THAN ONCE A MONTH, FROM THE MANAGEMENT OF THE BANK. THE FINANCES OF THE BANK SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT ACCOUNTING FIRM FREE FROM ANY CONFLICTS OF INTEREST WITH THE BANK OR STATE. THE BOARD SHALL MAKE ALL REPORTS AND THE AUDIT PUBLIC WHEN IT RECEIVES THEM. THE BOARD SHALL CHANGE AUDITORS AT LEAST EVERY THREE YEARS.

(d) EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS AND SERVE AT THEIR PLEASURE, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED BY THE PRESIDENT ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM. THE PRESIDENT SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS FROM AMONG THE CANDIDATES APPROVED BY THE STATE PERSONNEL SYSTEM AND THE BANK SHALL COMPENSATE THEM ACCORDINGLY BY SALARY. THE TITLES AND DUTIES OF THE REMAINING TOP FIVE OFFICIALS SHALL BE DETERMINED BY THE BOARD OF DIRECTORS. NO EMPLOYEE OF THE BANK SHALL RECEIVE COMPENSATION IN THE FORM OF COMMISSIONS, FEES, OR BONUSES, EXCEPT THAT THE BOARD MAY ESTABLISH A SYSTEM FOR AWARDED MODEST BONUSES FOR OUTSTANDING PERFORMANCE OF AN EMPLOYEE'S DUTIES IN SERVICE OF THE BANK'S PURPOSES. THE PRESIDENT OF THE BANK MUST HAVE SUBSTANTIAL EXPERIENCE IN BANKING. THE MANAGEMENT OF THE BANK SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE BANK, WHICH SHALL FOLLOW THE GENERAL OBJECTIVES SET FORTH IN THIS SECTION AND, SUBSEQUENTLY, BY THE BOARD OF DIRECTORS.

(6) Rules and Regulations of State Bank. (a) FOLLOWING THE COMMENCEMENT OF OPERATIONS ON JANUARY 1, 2018, THE INITIAL MANAGEMENT OF THE BANK, CONSISTING OF THE TOP FIVE OPERATING OFFICIALS OF THE BANK, INCLUDING THE PRESIDENT APPOINTED BY THE BOARD OF DIRECTORS AND THOSE HIRED BY THE PRESIDENT UNDER THE PROTOCOLS OF THE STATE PERSONNEL SYSTEM, SHALL BE CHARGED WITH DRAFTING THE RULES AND REGULATIONS OF THE BANK, SUBJECT TO CONSIDERATION OF RECOMMENDATIONS BY THE ADVISORY BOARD AND APPROVAL OF THE BOARD OF DIRECTORS OF THE BANK. THE PROPOSED RULES AND REGULATIONS APPROVED BY THE BOARD OF DIRECTORS SHALL BE SUBMITTED TO THE GENERAL ASSEMBLY FOR FINAL APPROVAL.

(b) THE RULES AND REGULATIONS SHALL COVER, BUT NOT BE LIMITED TO, THE FOLLOWING ISSUES: PROTECTION OF PUBLIC DEPOSITS, ADEQUACY OF CAPITALIZATION, LENDING CRITERIA, SECURITY FOR LOANS, ACCOUNTING STANDARDS APPLICABLE TO THE BANK, CRITERIA FOR INVESTMENTS, WHO MAY BE A DEPOSITOR AT THE BANK, POLICIES FOR MANAGEMENT OF LOANS, THE ISSUE AS TO WHETHER AND TO WHAT EXTENT, BASED UPON DIFFERENCES BETWEEN THE BANK AND PRIVATE BANKS, THE ADMINISTRATION AND ENFORCEMENT OF SUCH RULES AND REGULATIONS GOVERNING THE BANK SHOULD REMAIN UNDER THE AUTHORITY OF THE BANKING BOARD OR UNDER THE MANAGEMENT OF THE BOARD OF THE BANK, WHETHER AND UNDER WHAT CONDITIONS THE BANK MAY EXTEND THE FULL FAITH AND CREDIT OF THE BANK TO OBLIGATIONS THAT IT ASSUMES, WHETHER THE BANK MAY GUARANTEE THE LOANS OF OTHER BANKS, AND ANY OTHER ISSUES RELEVANT TO THE ESTABLISHMENT AND OPERATION OF THE BANK SO AS TO ENSURE ITS FINANCIAL SOUNDNESS AND ITS ETHICAL MANAGEMENT TO SERVE THE PUBLIC INTEREST OF THE CITIZENS OF COLORADO.

(7) Initial Operation of Bank. WITHIN THREE MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION 22 OF ARTICLE X, THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS TO ENABLE THE BANK TO PURCHASE OR LEASE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS SUFFICIENT FOR THE BANK TO BEGIN LENDING OPERATIONS. AFTER THE BOARD OF DIRECTORS IS ELECTED, A PRESIDENT IS HIRED, AND ADVISORY BOARD IS SELECTED, THE PRESIDENT OF THE BANK, AFTER CONSULTATION WITH THE ADVISORY BOARD, AND WITH THE APPROVAL OF THE BOARD OF DIRECTORS, SHALL PURCHASE OR LEASE

THE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS NECESSARY TO ENABLE THE BANK TO CONDUCT ITS BUSINESS. THE BANK SHALL ESTABLISH ITS OFFICES WITHIN THE STATE OF COLORADO.

(8) **Capitalization of State Bank.** THE CAPITALIZATION OF THE BANK MAY INCLUDE ANY PROCEEDS FROM TAXES AND OTHER REVENUES AND FUNDS OF THE STATE, INCLUDING OTHER FUNDS SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS, THAT ARE NOT OTHERWISE OBLIGATED, OTHER DEPOSITS IN ADDITION TO THOSE FROM THE STATE AS PERMITTED BY SOUND BANKING PRACTICES, AND FUNDS GENERATED BY REVENUE BONDS ISSUED BY THE BANK. ALL SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE STATE BANK, INCLUDING MONEY HELD BY OTHER BANKS FOR THE STATE OF COLORADO PRIOR TO THE ESTABLISHMENT OF THE BANK, WHICH SHALL BE TRANSFERRED TO THE BANK WITHIN TEN WORKING DAYS, OR IN ANY EVENT AS SOON AS PRACTICABLE AFTER THE BOARD OF DIRECTORS DECLARES THAT THE BANK IS READY TO RECEIVE THE TRANSFER OF FUNDS. THE TRANSFER OF FUNDS SHALL COMMENCE NO LATER THAN TWO YEARS FROM THE EFFECTIVE DATE OF THIS SECTION 22 OF ARTICLE X. THE BOARD OF DIRECTORS, UPON RECEIVING THE ADVICE AND RECOMMENDATIONS FROM THE MANAGEMENT OF THE BANK, SHALL DETERMINE THE MEANS FOR ADDITIONAL CAPITALIZATION AS REQUIRED TO MEET THE OBJECTIVES OF THE BANK AS SET FORTH IN THIS SECTION.

(9) **Effective date.** THIS SECTION SHALL BE EFFECTIVE JANUARY 1, 2017.