

**#2000-84**

**AGREEMENT BY AND BETWEEN  
FIRST SUBURBAN NATIONAL BANK  
MAYWOOD, IL  
AND  
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY**

First Suburban National Bank, Maywood, Illinois (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 his National Bank Examiner, has examined the Bank, and his findings are contained in the Report of Examination, dated April 17, 2000 (ROE).

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**

(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).

(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:

Donelle Ward, Assistant Deputy Comptroller

Chicago North Field Office

Arlington Place II, Suite 340

85 West Algonquin Road

Arlington Heights, Illinois 60005

## **ARTICLE II**

### **COMPLIANCE COMMITTEE**

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least five (5) directors, of which no more than two (2) 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)), or a family member of any such person. 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 thirty (30) days of the appointment of the Committee and every thirty (30) days 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**

#### **CAPITAL PLAN AND HIGHER MINIMUMS**

(1) The Bank shall maintain the following capital levels (as defined in 12 C.F.R. Part 3):

- (a) Tier 1 capital at least equal to ten percent (10%) of risk-weighted assets;
- (b) Tier 1 capital at least equal to six and one-half percent (6.5%) of adjusted total assets.

(2) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a three-year capital program. The program shall include:

- (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1);
- (b) projections for growth and capital requirements based upon a detailed

analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;

- (c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
- (d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
- (e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and
- (f) a dividend policy that permits the declaration of a dividend only:
  - (i) when the Bank is in compliance with its approved capital program;
  - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
  - (iii) with the prior written approval of the Assistant Deputy Comptroller, unless the dividend is to service existing debt of the Bank's holding company.

(3) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for approval. Upon approval by the Assistant Deputy Comptroller, the Bank shall implement and adhere to the capital program. The Board shall review and update the Bank's capital program on an annual basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted 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.

## **ARTICLE IV**

### **BOARD'S COMMITTEE STRUCTURE**

(1) Within one-hundred-twenty (120) days, the Compliance Committee shall conduct a review of the Board's Loan, ALCO, and Audit committee structure. The review shall include an evaluation of the existing structure and shall include:

- (a) an analysis of the responsibilities assigned to each member;
- (b) the composition of each committee with regard to the number of members and the technical expertise required for each; and
- (c) specific recommendations to improve the efficiency and responsiveness of each committee.

(2) Upon completion of the review, a copy of the report shall be forwarded to the Assistant Deputy Comptroller along with a copy of the Board resolution making appropriate adjustments in the committee structure.

## **ARTICLE V**

### **LOAN ADMINISTRATION**

(1) The Board shall, within sixty (60) days, develop and implement a written program to improve the Bank's loan administration. The program shall include, but not be limited to:

- (a) identification of individual(s) responsible for management of the lending function and empowerment of same to carry out these duties;
- (b) accurate and written job description(s) which outline individual responsibilities;

- (c) designation of loan officers as the individuals with the primary responsibility to identify problem credits within their own portfolios in a timely manner;
- (d) procedures to ensure satisfactory and perfected collateral documentation;
- (e) procedures to ensure that extensions of credit are granted, by renewal or otherwise, to any borrower only after obtaining and analyzing current and satisfactory credit information; and
- (f) procedures to ensure the accuracy of internal management information systems.

(2) Upon completion, a copy of the program shall be forwarded to the Assistant Deputy Comptroller.

(3) Upon adoption, a copy of the revised job description(s) and policies/procedures shall be forwarded to the Assistant Deputy Comptroller for review.

(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.

## **ARTICLE VI**

### **INDIRECT AUTOMOBILE LENDING**

- (1) The Bank shall not purchase or originate indirect automobile loans until:
  - (a) the Board has developed and adopted revised indirect automobile lending policies and procedures which include, at a minimum:
    - (i) a description of acceptable types of indirect loans;
    - (ii) a provision that current and satisfactory credit information will be

- obtained on each borrower, including a process to directly verify a borrower's employment status, income, and down-payment;
- (iii) a maturity schedule related to the anticipated source of repayment, and the useful life of the collateral;
  - (iv) a maximum ratio of loan value (including any add-ons such as credit life, credit disability, force placed insurance and service contracts) to asset value;
  - (v) collection procedures, to include follow-up efforts that are systematically and progressively stronger;
  - (vi) charge-off of all indirect automobile loans which are past due one-hundred-twenty (120) days or more;
  - (vii) a prohibition on the renewal or extension of any loans without the written approval of the senior loan officer, who shall review the borrower's past repayment history and current ability to repay and then document how the extension will enhance the collectibility of the credit;
  - (viii) disposition policies and procedures for repossessed automobiles;
  - (ix) adherence to and enforcement of dealer agreements;
  - (x) a limitation on aggregate outstanding indirect automobile loans in relation to other balance sheet accounts or per dealer;
  - (xi) guidelines and limitations on concentrations of credit;
  - (xii) guidelines to ensure that the Bank's indirect automobile loans are written in compliance with all applicable laws, rules and

regulations; and

- (b) the Assistant Deputy Comptroller has approved the Bank's written indirect automobile lending policies; thereafter the Bank shall implement and adhere to the policies and procedures developed pursuant to this Article.

(2) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policies developed pursuant to this Article.

## **ARTICLE VII**

### **CREDIT AND COLLATERAL EXCEPTIONS**

(1) The Board shall obtain current and satisfactory credit information on all loans lacking such information, including those listed in any ROE or in any listings of loans lacking such information provided management at the conclusion of an examination.

(2) The Board shall ensure proper collateral documentation is maintained on all loans and correct each collateral exception listed in any ROE or in any listings of loans lacking such information provided management at the conclusion of an examination.

(3) The Bank may grant, extend, renew, alter or restructure any loan or other extension of credit only after:

- (a) documenting the specific reason or purpose for the extension of credit;
- (b) identifying the expected source of repayment in writing;
- (c) structuring the repayment terms to coincide with the expected source of repayment;



- (d) obtaining and analyzing current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations;
  - (i) Failure to obtain the information in (d) on any loan in excess of \$25,000, shall require a majority of the full Board (or a delegated committee thereof) to certify in writing the specific reasons why obtaining and analyzing the information in (d) would be detrimental to the best interests of the Bank.
  - (ii) A copy of the Board certification shall be maintained in the credit file of the affected borrower(s). The certification will be reviewed by this Office in subsequent examinations of the Bank, and
- (e) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable.

## **ARTICLE VIII**

### **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." 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 one-hundred thousand dollars (\$100,000) 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 one-hundred thousand dollars (\$100,000);
- (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) A copy of each review shall be forwarded to the Assistant Deputy Comptroller on a quarterly basis (in a format similar to Appendix A, attached hereto).

(7) 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 one-hundred thousand dollars (\$100,000) 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.

(8) A copy of the approval of the Board or of the designated committee shall be maintained in the file of the affected borrower.

## **ARTICLE IX**

### **ALLOWANCE FOR LOAN AND LEASE LOSSES**

- (1) Within forty-five (45) days, the Board shall review the adequacy of the Bank's

Allowance for Loan and Lease Losses 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 for Loan and Lease Losses found in the Comptroller's Handbook for National Bank Examiners, and shall focus particular attention on the following factors:

- (a) results of the Bank's external loan review;
- (b) an estimate of inherent loss exposure on each significant credit;
- (c) loan loss experience;
- (d) trends of delinquent and nonaccrual loans;
- (e) concentrations of credit in the Bank;
- (f) present and prospective economic conditions;
- (g) changes in the nature and volume of the loan portfolio;
- (h) changes in loan personnel and depth of experience; and
- (i) the quality and level of management and board oversight.

(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 Report of Condition, 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) A copy of the Board's program shall be submitted to the Assistant Deputy Comptroller for review and approval.

## **ARTICLE X**

## **INTEREST RATE RISK POLICY**

(1) Within one-hundred-twenty (120) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written interest rate risk policy. In formulating this policy, the Board shall refer to the Interest Rate Risk booklet, L-IRR, of the Comptroller's Handbook.

The policy shall provide for a coordinated interest rate risk strategy and, at a minimum, address:

- (a) the establishment of adequate management reports on which to base sound interest rate risk management decisions, including procedures to ensure that:
    - (i) data used in creating such reports are accurate, and
    - (ii) assumptions used in the interest rate risk model process are reasonable;
  - (b) establishment and guidance of the Bank's strategic direction and tolerance for interest rate risk;
  - (c) implementation of effective tools to measure and monitor the Bank's performance and overall interest rate risk profile, including tools which measure income-at-risk;
  - (d) employment of competent personnel to manage interest rate risk;
  - (e) prudent limits on the nature and amount of interest rate risk that can be taken, including but not limited to the establishment of income-at-risk limits; and
  - (f) periodic review of the Bank's adherence to the policy and established risk limits.
- (2) Upon adoption, a copy of the written policy shall be forwarded to the Assistant

Deputy Comptroller for review.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policy developed pursuant to this Article.

## ARTICLE XI

### INVESTMENT POLICY

(1) Within one-hundred-twenty (120) days, the Board shall review and revise the Bank's investment policy and implement the revised policy, and thereafter ensure Bank adherence to the policy. The policy shall contain the basic elements of a sound investment policy as described in the Comptroller's Handbook for National Bank Examiners at Section 203.1 and shall include:

- (a) an investment portfolio strategy that is consistent with Board approved Bank asset and liability management policies and interest rate risk tolerances. Investment portfolio management shall be consistent with regulatory guidance provided in An Examiner's Guide to Investment Products and Practices, dated December 1992, 12 C.F.R. Part 1, and the Comptroller's issuance OCC 98-20;
- (b) approval procedures that will include dollar size limits, quality limitations, maturity limitations, and concentration or diversification guidelines;
- (c) a requirement that investment securities be supported by adequate credit and interest rate risk analysis as described in the Interest Rate Risk booklet, L-IRR, of the Comptroller's Handbook and in the Comptroller's

issuance OCC 98-20, dated April 27, 1998;

- (d) required reviews of securities dealers;
- (e) periodic reports to and approval by the Board for all investment portfolio purchases and sales and strategy changes; and
- (f) monthly review by the Board's investment committee of the Bank's investment portfolio activity to ensure adherence to the investment policy and to applicable banking and securities laws and regulations.

(2) The revised investment policy shall be implemented and a copy shall be forwarded to the Assistant Deputy Comptroller.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policy developed pursuant to this Article.

## **ARTICLE XII**

### **AUDIT AND LOAN REVIEW FOLLOW UP**

(1) Board shall evaluate the reports of any party, including any Bank employee, providing audit or loan review services to the Bank, and shall assess the impact on the Bank of any deficiencies cited in such reports.

(2) The Board shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit and loan review reports, and maintain a written record describing those actions.

## **ARTICLE XIII**

### **CONFLICT OF INTEREST POLICY**

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written, comprehensive conflict of interest policy applicable to the Bank's and the Bank's holding company's directors, principal shareholders, executive officers, affiliates, and employees (Insiders) and related interests of such Insiders. The policy, in addition to defining a conflict of interest, shall address:

- (a) avoidance of conflicts of interest and breaches of fiduciary duty, and the appearance of conflicts of interest;
- (b) involvement in the loan approval process of Insiders who may benefit directly or indirectly from the decision to grant credit;
- (c) disclosure of actual and potential conflicts of interest to the Board, and periodic disclosure of "related interests" as defined by 12 C.F.R. Part 215;
- (d) requirements for arms-length dealing in any transactions by Insiders, or their related organizations, involving the Bank's sale, purchase, or rental of property and services;
- (e) disclosure of any Insider's material interest in the business of a borrower, an applicant, or other customer of the Bank; and
- (f) restrictions on and disclosure of receipt of anything of value by Insiders, directly or indirectly, from borrowers, loan applicants, other customers, or suppliers of the Bank.

(2) Upon adoption, a copy of this conflict of interest policy shall be forwarded to the



Assistant Deputy Comptroller for review.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policy developed pursuant to this Article.

(4) Within ninety (90) days, the Compliance Committee shall conduct a review of the Bank's existing relationships with its and its holding company's directors, executive officers, affiliates, principal shareholders, employees and their related interests for the purpose of identifying relationships not in conformity with the policy. The Board shall ensure that:

- (a) any nonconforming relationships are brought into conformity with the policy within thirty (30) days; and
- (b) that within thirty (30) days the Bank is properly reimbursed for:
  - (i) any excess or improper payments to Insiders and their related interests; and
  - (ii) any excess or improper payments for services provided by Insiders and their related interests.

Thereafter, the Board shall review all proposed transactions, or modifications of existing relationships, between the Bank and any of its or its holding company's directors, executive officers, affiliates, principal shareholders, employees and their related interests.

Documentation supporting these reviews shall be in writing and preserved in the Bank.

#### **ARTICLE XIV**

(1) The Board shall implement and thereafter ensure adherence to:

- (i) the written program to establish a system of internal controls and audit procedures to comply with the Bank Secrecy Act, developed and adopted pursuant to Article III of the Agreement by and Between First Suburban National Bank, Maywood, Illinois, and the Office of the Comptroller of the Currency dated May 17, 1999 (May 1999 Agreement); and
- (ii) the written consumer compliance program designed to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules, and regulations, developed and adopted pursuant to Article IV of the May 1999 Agreement.

#### **ARTICLE XV**

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or approval, 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 by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Agreement shall continue in full force and effect unless or until such provisions are amended by mutual consent of the parties to the Agreement or excepted, waived, or terminated by the Comptroller.

(5) The conditions imposed in writing by the agency in connection with the granting of any application or other request within the meaning of 12 U.S.C. 1818 as set forth in the Comptroller's letter to the bank dated December 13, 1999, are superceded by this Agreement and are no longer in effect except as may be provided in this Agreement.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set her hand on behalf of the Comptroller.

Signed \_\_\_\_\_

9-11-2000 \_\_\_\_\_

Donelle Ward

Date

Assistant Deputy Comptroller

Central District

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.

<b>NAMES:</b>	<b>SIGNATURES:</b>	<b>DATES:</b>
Louis Baldo	Signed	9-11-00
Jerome DePalma		
Alan Frisch	Signed	9-11-00
Edward Hogan	Signed	9-11-00
Barry Kornick	Signed	9-11-00
Kenneth Pienta	Signed	9-11-00
Martin Price	Signed	9-11-00
Gregory Siorek	Signed	9-11-00
Bernard Sloan	Signed	9-11-00
Norman Sturm	Signed	9-11-00
Salvatore Tanuta	Signed	9-11-00
Arnold Turovitz	Signed	9-11-00
Harry Young, Jr.	Signed	9-11-00
Gerald Zaidman	Signed	9-11-00