

**#2001-107**

**AGREEMENT BY AND BETWEEN  
FIRST COMMUNITY BANK, NATIONAL ASSOCIATION  
ALICE, TEXAS  
AND  
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY**

First Community Bank, N.A., Alice, Texas ("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 2, 2001 ("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 -- 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) 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:

Assistant Deputy Comptroller  
San Antonio South Field Office  
5350 South Staples, Suite 405  
Corpus Christi, TX 78411-4654

## **ARTICLE II -- COMPLIANCE COMMITTEE**

(1) Within ten (10) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one shall be an employee 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) The Compliance Committee shall submit a written progress report to the Board on a quarterly basis within thirty (30) days of the end of each calendar quarter, with the first such report being as of December 31, 2001 and due on or before January 30, 2002.

(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 -- PROGRESS REPORTING**

(1) The written progress reports described in Article II, paragraph 3 shall set forth in detail:

- (a) actions taken to comply with each Article of the Agreement;
- (b) results of those actions; and
- (c) a description of the actions needed to achieve full compliance with each Article of this Agreement.

(2) The progress reports should also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the ROE or in any future Report of Examination.

#### **ARTICLE IV -- CAPITAL PLAN AND HIGHER MINIMUMS**

(1) The Bank shall achieve by June 30, 2002, and thereafter 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 eight percent (8%) of adjusted total assets.<sup>1</sup>

(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;

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<sup>1</sup> Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure used for Call Report purposes minus end-of-quarter intangible assets. As further noted in 12 C.F.R. § 3.2(a), a bank may be required to compute and maintain its leverage ratio on the basis of actual, rather than average total assets. This language would have to be modified to reflect that change.

- (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 once the Assistant Deputy Comptroller has made the determination described in Article V, paragraph 1.

(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.

#### **ARTICLE V -- DIVIDENDS PROHIBITED**

(1) Beginning immediately, the Bank is prohibited from declaring or paying dividends until the Assistant Deputy Comptroller has determined that:

- (a) the Bank has complied with its capital program, as described in Article IV, paragraph 1;
- (b) the Bank has complied with 12 U.S.C. §§ 56 and 60; and
- (c) there has been no material deterioration in the Bank's condition.

#### **ARTICLE VI -- PROFIT PLAN**

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written profit plan to improve and sustain the earnings of the Bank. This plan shall include, at minimum, the following elements:

- (a) identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance;
- (b) realistic and comprehensive budgets, including projected balance sheets and year-end income statements;
- (c) a budget review process to monitor both the Bank's income and expenses, and to compare actual figures with budgetary projections; and
- (d) a description of the operating assumptions that form the basis for major projected income and expense components.

(2) The budgets and related documents required in paragraph (1) above for 2002 shall be submitted to the Assistant Deputy Comptroller upon completion. The Board shall submit to the Assistant Deputy Comptroller annual budgets as described in paragraph (1) above for each year this Agreement remains in effect. The budget for each year shall be submitted on or before November 30, of the preceding year.

(3) The Board shall forward comparisons of its balance sheet, and profit and loss statement to the profit plan projections to the Assistant Deputy Comptroller on a quarterly basis.

#### **ARTICLE VII -- CREDIT RISK**

(1) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to reduce the high level of credit risk in the Bank. The program shall include, but not be limited to:

- (a) procedures to strengthen credit underwriting, particularly in the commercial and real estate portfolios;
- (b) procedures to strengthen management of loan operations and to maintain an adequate, qualified staff in all lending functional areas;

- (c) procedures to ensure early problem loan identification to assure the timely identification and rating of loans and leases based on lending officer submissions;
- (d) procedures for strengthening collections; and,
- (e) an action plan to control loan growth.

(2) The Board shall submit a copy of the program to the Assistant Deputy Comptroller.

(3) At least quarterly, the Board shall prepare a written assessment of the bank's credit risk, which shall evaluate the Bank's progress under the aforementioned program. The Board shall submit a copy of this assessment 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 VIII -- CONCENTRATIONS OF CREDIT - INDIRECT LENDING**

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to, a program to limit the bank's indirect lending activities. Specifically, the Board shall develop and approve a limit on the ratio of total indirect loans to Tier 1 capital [as defined by 12 CFR 3.2(c)], and a limit on the ratio of indirect loans by dealer to Tier 1 capital. Further, the Board shall adopt, implement, and approve limits on all segments of the loan portfolio that represent a concentration of credit when compared to Tier 1 capital.

(2) The Board shall promptly forward a copy of this program to the Assistant Deputy Comptroller for review.

#### **ARTICLE IX -- ASSET QUALITY**

(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 thirty (30) 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 seventy-five thousand dollars (\$75,000) shall be forwarded to the Assistant Deputy Comptroller.

(4) The Board, or a designated committee thereof, 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 seventy-five thousand dollars (\$75,000);
- (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.

(5) 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).

(6) 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 seventy-five thousand dollars (\$75,000) only if each of the following conditions is met:

- (a) the Board, or 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 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.

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

#### **ARTICLE X -- CREDIT AND COLLATERAL EXCEPTIONS**

(1) Effective immediately, the Board shall take all reasonable efforts to ensure that the Bank obtains current and satisfactory credit information on all loans lacking such information, including those listed 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 management by the national bank examiners at the conclusion of an examination.

(2) Effective immediately, the Board shall take all reasonable efforts to ensure that proper collateral documentation is maintained on all loans and to correct any collateral exceptions that exist in the Bank's loan portfolio.

(3) Effective immediately, the Bank may grant, extend, renew, alter or restructure any loan or other extension of credit of seventy-five thousand dollars (\$75,000) or more 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) shall require a majority of the full Board (or a designated 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 certification shall be maintained in the credit file of the affected borrower(s). The certification may 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 XI -- ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) The Board shall review the adequacy of the Bank's Allowance for Loan and Lease Losses (Allowance) 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 found in the Allowance for Loan and Lease Losses booklet of the Comptroller's Handbook, and shall focus particular attention on the following factors:

- (a) results of the Bank's internal loan review;
- (b) results of the Bank's external loan review;
- (c) an estimate of inherent loss exposure on each significant credit;
- (d) loan loss experience;
- (e) trends of delinquent and nonaccrual loans;
- (f) concentrations of credit in the Bank;
- (g) present and prospective economic conditions; and,
- (h) historical data and correction of deficiencies in credit risk identification.

(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 Consolidated Reports of Condition and Income, 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.

(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 XII -- CLOSING

(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/her 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) This Agreement does not constitute a contract, express or implied, or any other obligation binding on the Comptroller, any federal government agency or employee, or the United States and does not affect the ability of the Comptroller to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations.

(4) 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.

(5) 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. In the event that the Bank no longer operates as a national bank, then, on the date that the Bank converts, this Agreement shall cease to be binding on the Comptroller and the Bank.

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

/s/ Gerry B. Hagar

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Gerry B. Hagar  
Assistant Deputy Comptroller

11/21/01  
Date

**AND, IN FURTHER TESTIMONY WHEREOF**, the undersigned, as the duly elected and acting Board of the First Community Bank, Alice, Texas, have hereunto set their hands on behalf of the Bank.

**SIGNATURES:**

**DATE:**

/s/

Manuel Galindo

11/19/01

/s/

W. Wesley Hoskins

11/19/01

Van Huseman

/s/

Sheree Lewis

11/19/01

/s/

Linda Weeks

11/19/01

**APPENDIX A**  
**FIRST COMMUNITY BANK, NA**  
**ALICE, TX**

CRITICIZED ASSET REPORT AS OF: \_\_\_\_\_

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BORROWER(S):

ASSET BALANCE(S) AND OCC RATING (SM, SUBSTANDARD, DOUBTFUL OR LOSS):

\$ \_\_\_\_\_ CRITICISM \_\_\_\_\_

AMOUNT CHARGED OFF TO DATE \_\_\_\_\_

FUTURE POTENTIAL CHARGE-OFF \_\_\_\_\_

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PRESENT STATUS (Fully explain any increase in outstanding balance; include past due status, nonperforming, significant progress or deterioration, etc.):

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FINANCIAL AND/OR COLLATERAL SUPPORT (include brief summary of most current financial information, appraised value of collateral and/or estimated value and date thereof, bank's lien position and amount of available equity, if any, guarantor(s) info, etc.):

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PROPOSED PLAN OF ACTION TO ELIMINATE ASSET CRITICISM(S) AND TIME FRAME FOR ITS ACCOMPLISHMENT:

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IDENTIFIED SOURCE OF REPAYMENT AND DEFINED REPAYMENT PROGRAM (repayment program should coincide with source of repayment):

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Use this form for reporting each criticized asset that exceeds fifty thousand dollars (\$50,000) and retain the original in the credit file for review by the examiners. Submit your reports **quarterly** until notified otherwise, in writing, by the Assistant Deputy Comptroller.