

#2001-79

AGREEMENT BY AND BETWEEN
Fidelity National Bank
Norcross, Georgia
and
The Office of the Comptroller of the Currency

Fidelity National Bank, Norcross, Georgia (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/her National Bank Examiner, has examined the Bank, and his/her findings are contained in the Report of Examination, dated December 31, 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/her 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 Director of Special Supervision/Fraud (Director) pursuant to this Agreement shall be forwarded to:

Ronald G. Schneck
Director of Special Supervision/Fraud
Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 6-4
Washington, DC 20219

ARTICLE II

COMPLIANCE COMMITTEE

(1) The Board shall maintain a Compliance Committee of at least three (3) directors, of which no more than one (1) 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. 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 Director.

ARTICLE III

CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by October 31, 2001, and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

(a) Total capital at least equal to eleven percent (11%) of risk-weighted assets.

(b) Tier 1 capital at least equal to eight percent (8%) of adjusted total assets.

(2) The requirement in this Agreement to meet and maintain a specific capital level means that the Bank may not be deemed to be “well capitalized” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6 pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

(3) Within ninety (90) days, the Board shall cause to be developed, implemented, and thereafter direct 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 augment its capital structure if necessary 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 determination of no supervisory objection by the Director.

(4) Upon completion, the Bank's capital program shall be submitted to the Director for prior determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Director, the Bank shall implement and adhere to the capital program. The Board shall review and update the Bank's capital program on at least an annual basis. Copies of the reviews and updates shall be submitted to the Director.

(5) The Board shall cause the Bank to have the processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

ARTICLE IV

STRATEGIC PLAN

(1) Within ninety (90) days, the Board shall review and cause the Bank to revise as necessary the Bank's strategic plan covering at least a three-year period. The strategic plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, product line development and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives and, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's present and future operating environment;

- (c) the development of strategic goals and objectives to be accomplished over the short and long term;
- (d) an identification of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in (1)(c) of this Article;
- (e) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems and policies and procedures in light of the goals and objectives developed under (1)(c) of this Article;
- (f) a management employment and succession program to promote the retention and continuity of capable management;
- (g) product line development and market segments that the Bank expects to promote or develop;
- (h) a plan to improve bank earnings and accomplish identified strategic goals and objectives, including individual responsibilities, accountability and specific time frames;
- (i) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the period covered by the strategic plan;
- (j) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
- (k) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and

- (1) systems to monitor the Bank's progress in meeting the plan's goals and objectives.
- (2) Upon adoption, a copy of the plan shall be forwarded to the Director for review and prior determination of no supervisory objection.
- (3) The Board shall cause the Bank to have the processes, personnel, and control systems to ensure implementation of and adherence to the plan developed pursuant to this Article.

ARTICLE V

NEW PRODUCTS AND SERVICES

- (1) Prior to the Bank's offering of any new products or services, or the significant expansion of any existing product or service, the Board shall cause to be prepared a written analysis of that product or service. The analysis shall, at a minimum, include the following:
 - (a) an assessment of the risks and benefits of the product or service to the Bank;
 - (b) an explanation of how the product or service is consistent with the Bank's strategic plan;
 - (c) an evaluation of the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with the product or service; and
 - (d) a profitability analysis, including growth projections and interest rate risk.
- (2) Prior to the Bank's offering of a new product or service, or the significant expansion of an existing product or service, the Board shall review management's written analysis and submit a copy to the Director.

(3) For purposes of this Article, “significant expansion” shall be defined as growth in an existing product or service greater than 20% on an annual basis where that product or service accounts for greater than either 2% of total assets or 5% of annual income.

ARTICLE VI

BOARD TO ENSURE COMPETENT MANAGEMENT

(1) The Board shall ensure that the Bank has competent management in place on a full-time basis to carry out the Bank’s policies, comply with this Agreement, comply with applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Within sixty (60) days, the Board shall review the Bank’s structure and the capabilities of the Bank’s management to perform present and anticipated duties. This review shall include:

- (a) an assessment of each officers’ experience, other qualifications and performance compared to the position’s description, duties and responsibilities;
- (b) an evaluation of current lines of authority, reporting responsibilities, and delegation of duties for all officers, including identification of any overlapping duties or responsibilities;
- (c) a recommended organization chart that clearly reflects areas of responsibility and lines of authority for all officers, including the Bank's president and chief executive officer;
- (d) an assessment of the Board’s strengths and weaknesses along with a director education program designed to strengthen identified weaknesses; and

- (e) an assessment of the Board's experience, and any recommendations to augment the Board.

(3) Within ninety (90) days, the Board shall cause to be developed a written plan to correct any deficiencies noted in the review and shall determine whether management changes should be made, including the need for additions to or deletions from current management.

(4) Within ninety (90) days, if the Board determines that an officer will continue in his/her position but that the officer's depth of skills needs improvement, the Board shall cause to be developed and implemented a written program, with specific time frames, to improve the officer's supervision and management of the Bank. Upon completion, a copy of the written program shall be submitted to the Director. At a minimum the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to supervise effectively;
- (b) a program to improve the effectiveness of the officer;
- (c) objectives by which the officer's effectiveness will be measured; and
- (d) a performance appraisal program for evaluating performance according to the position's description and responsibilities and for measuring performance against the Bank's goals and objectives.

(5) If a management position is vacant now or in the future, including if the Bank realigns an existing manager's responsibilities and a management position becomes vacant, the Bank shall within sixty (60) days of such vacancy appoint a capable person to the vacant position who shall be vested with sufficient executive authority to perform all of the functions within the scope of that position's responsibility.

(6) Prior to the appointment of any individual to an executive officer position, the Bank shall submit to the Director the following information:

- (a) the information sought in the “Changes in Directors and Senior Executive Officers” booklet of the Comptroller’s Corporate Manual, together with a legible fingerprint card for the proposed individual;
- (b) a written statement of the Bank's reasons for selecting the proposed officer; and
- (c) a written description of the proposed officer's duties and responsibilities.

(7) The Director shall have the power of veto over the employment of the proposed executive officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer.

(8) The requirement to submit information and the prior veto provisions of this Article are based on the authority of 12 U.S.C. § 1818(b)(6)(E) and do not require the Comptroller to complete his/her review and act on any such information or authority within ninety (90) days.

(9) The Board shall cause the Bank to have the processes, personnel, and control systems to ensure implementation of and adherence to the plan developed pursuant to this Article.

(10) Copies of the Board's written plan and study shall be forwarded to the Director, who shall retain the right to determine the adequacy of the report and its compliance with the terms of this Agreement. In the event the written plan, or any portion thereof, is not implemented, the Board shall immediately advise the Director, in writing, of specific reasons for deviating from the plan.

ARTICLE VII

LENDING POLICY

- (1) Within ninety (90) days, the Board shall review and cause to be revised, where appropriate, the Bank's written loan policy. In reviewing this policy, the Board shall refer to the comments contained in the ROE with respect to the Bank's lending policies and shall address in the revised policy any matters identified in the ROE. The policy shall conform to the guidance contained in the Loan Portfolio Management booklet, A-LPM, of the Comptroller's Handbook.
- (2) Upon adoption, the revised policy shall be implemented, the Board shall direct Bank adherence to the policy, and a copy of the policy shall be forwarded to the Director for review.
- (3) The Board shall cause the Bank to have the processes, personnel, and control systems to ensure implementation of and adherence to the policy developed pursuant to this Article.

ARTICLE VIII

MANAGEMENT INFORMATION SYSTEMS FOR THE LOAN PORTFOLIO

- (1) The Board shall cause management to revise the Bank's management information system (MIS) governing the Bank's lending function. The revised MIS shall provide for:
 - (a) timely delivery of current information;
 - (b) controls to ensure the accuracy of information;
 - (c) ensuring that data are processed and compiled uniformly to facilitate meaningful trend analysis and provide for future systems changes;
 - (d) complete and relevant information in a summarized form for Board and management reports to permit effective decision making;

- (e) identifying, recording, and tracking missing, incomplete, or imperfect loan and collateral documentation, including lacking or outdated appraisals and operating statements on real estate projects;
- (f) generating periodic reports, on at least a monthly basis which identify emerging problem loans, identified problem loans, Other Real Estate Owned (OREO), and foreclosed assets;
- (g) maintaining a system by which the Board, or a delegated committee of the Board, can identify at the time of extension of credit, the aggregate customer liability relationship of that customer with the Bank;
- (h) maintaining systems and reports which identify and analyze real estate portfolio concentrations, including commitments, by type, collateral and location;
- (i) maintaining a system to calculate each concentration as a percentage of total capital;
- (j) maintaining systems and reports identifying each real estate loan or project that evidences one or more of the following characteristics: slower than anticipated sales, lease or rental activity; slower than anticipated construction progress; cost overruns; other impediments to orderly project completion; or inadequate reserves to pay interest and/or tenant improvements until project stabilization; and
- (k) producing the information, including, but not limited to, information listed in the ROE, that is necessary to effectively supervise the lending function.

(2) The Board shall cause the Bank to have in place processes, personnel, and control systems to ensure implementation of and adherence to the system developed pursuant to this Article.

(3) The Board shall designate a senior officer to coordinate the execution of this system.

(4) The Board shall submit a copy of the revised MIS reports to the Director.

ARTICLE IX

INTERNAL LOAN REVIEW

(1) The Bank shall within ninety (90) days employ or designate a sufficiently experienced and qualified person(s) or firm to ensure the timely and independent identification of problem loans and leases.

(2) The Board shall cause, within ninety (90) days, the Bank's internal loan review system to be revised. The revised system shall include an effective, independent and on-going loan review which reviews, at least quarterly, the Bank's loan and lease portfolios to assure the timely identification and categorization of problem credits. The system shall provide for a written report to be filed with the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth in Loan Portfolio Management booklet, A-LPM, of the Comptroller's Handbook. Such reports shall, at a minimum, include conclusions regarding:

- (a) the overall quality of the loan and lease portfolios;
- (b) the identification, type, rating, and amount of problem loans and leases;
- (c) the identification and amount of delinquent loans and leases;
- (d) credit and collateral documentation exceptions;
- (e) the identification and status of credit-related violations of law, rule or regulation;

- (f) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (b) through (e) of the Article;
- (g) concentrations of credit within the loan portfolio being reviewed and, in aggregate, annually;
- (h) loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (i) loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

(3) The Board shall cause to be developed and implemented within ninety (90) days a written program providing for independent review of problem loans and leases in the Bank's loan and lease portfolios for the purpose of monitoring portfolio trends, on at least a quarterly basis. The program shall require a quarterly report to the Board. At a minimum the program shall provide for an independent reviewer's assessment of the Bank's:

- (a) monitoring systems for early problem loan identification to assure the timely identification and rating of loans and leases based on lending officer submissions;
- (b) statistical records that serve as a basis for identifying sources of problem loans and leases by industry, size, collateral, division, group, indirect dealer, and individual lending officer;
- (c) system for monitoring previously charged-off assets and their recovery potential;
- (d) system for monitoring compliance with the Bank's lending policies and laws, rules, and regulations pertaining to the Bank's lending function; and
- (e) system for monitoring the adequacy of credit and collateral documentation.

(4) A written description of the program called for in this Article shall be forwarded to the Director upon implementation.

(5) The Board shall cause the Bank to have the processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

(6) The Board shall review the internal loan and lease review report(s) and shall direct that immediate, adequate, and continuing remedial action, if appropriate, is taken upon all findings noted in the report(s).

(7) A copy of the reports submitted to the Board, as well as documentation of the action taken by the Bank to collect or strengthen assets identified as problem credits, shall be preserved in the Bank.

ARTICLE X

NONACCRUAL LOANS

(1) The Bank shall immediately reverse or charge-off all interest that has been accrued contrary to the requirements contained in the Instructions for Preparation of Consolidated Reports of Condition and Income (Call Report Instructions) governing nonaccrual loans. Further, the Bank shall immediately reverse or charge-off that portion of the remaining accrued interest on such loans that, when combined with principal, is not protected by sound collateral values.

(2) Within thirty (30) days, the Board shall review and revise, where appropriate, the Bank's written policies and procedures governing the identification, supervision and control of nonaccrual loans. Such revised policies and procedures shall:

- (a) be consistent with the accounting requirements contained in the Call Report Instructions;

- (b) address the circumstances under which accrued interest due on a loan may be added to the outstanding principal amount when the loan is renewed or restructured; and
 - (c) require the monthly presentation to the Board of all loans meeting any of the nonaccrual criteria.
- (3) Upon adoption, a copy of the revised written policies and procedures shall be forwarded to the Director.
- (4) The Board shall cause the Bank to have the processes, personnel, and control systems to ensure implementation of and adherence to the policies developed pursuant to this Article.

ARTICLE XI

CREDIT AND COLLATERAL EXCEPTIONS

- (1) Within ninety (90) days, the Bank shall obtain current and satisfactory credit information on all loans lacking such information, including those listed in the ROE.
- (2) The Board shall cause, within ninety (90) days, the Bank to obtain proper collateral documentation on all loans secured by collateral and to correct each collateral exception listed in the ROE.
- (3) Effective immediately, 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 (3)(d) 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 (3)(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 XII

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) The Board shall cause to be adopted and implemented, within ninety (90) days, 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 five hundred thousand dollars (\$500,000) shall be forwarded to the Director.

(4) The Board shall cause the Bank to have the 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 monthly basis, to determine:

- (a) the status of each criticized asset or criticized portion thereof that equals or exceeds five hundred thousand dollars (\$500,000);
- (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 Director on a monthly 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 five hundred thousand dollars (\$500,000) 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 XIII

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 revise its program for the maintenance of an adequate Allowance. This review and revised program shall be designed in light of the comments on maintaining a proper Allowance found in the Allowance for Loan and Lease Losses booklet, A-ALLL, 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 criticized credit in excess of five hundred thousand dollars (\$500,000), including documented support for the specific allocation;
- (d) documented support for historical loan loss rates and time frames used for pools of criticized loans (graded Special Mention or worse) and loans graded Pass;
- (e) an analysis of impaired loans as required by the Statement of Financial Accounting Standards 114 (FAS 114), “Accounting by Creditors for the Impairment of a Loan;”
- (f) documented support for amounts or percentages for adjusting the historical loan loss rates based upon concentrations of credit; off-balance sheet items; changes in credit administration or underwriting policies and procedures; changes in credit administration and underwriting staffing, changes in economic conditions, and changes in portfolio and delinquency trends; and
- (g) an analysis of the Bank’s Allowance as compared to its peer banks, as identified in quarterly Uniform Bank Performance Reports, including, but not limited to, documented support of differences in Allowance balances, past due levels and trends, and portfolio composition (“peer bank analysis”).

(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 Bank's program, including policies and procedures fully detailing the ALLL methodology, shall be submitted to the Director Comptroller for review.

(4) The Board shall cause the Bank to have the processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

ARTICLE XIV

INTERNAL AUDIT

(1) The Board shall cause, within ninety (90) days, a revision to the Bank's independent, internal audit program. The revised internal audit program shall conform to the guidance contained in the Internal and External Audits booklet, M-Aud, of the Comptroller's Handbook, and be sufficient to:

- (a) detect irregularities in the Bank's operations;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (c) determine the accuracy of the Bank's books and records, including the timeliness of account reconciliation;
- (d) evaluate the Bank's adherence to established policies and procedures, with particular emphasis directed to the Bank's adherence to its loan policies concerning underwriting standards and problem loan identification and classification;
- (e) ensure adequate audit coverage in all areas; and
- (f) establish an annual audit plan using a risk based approach sufficient to achieve these objectives.

(2) As part of this audit program, the Board, or a committee thereof, shall evaluate the audit reports by any party providing auditing services to the Bank, and shall assess the impact on the Bank of any audit deficiencies cited in such reports.

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

(4) The audit function shall be supported by an adequately staffed department or outside firm, with respect to both the experience level and number of the individuals employed.

(5) The audit program shall be independent. The persons responsible for implementing the internal audit program described above shall report directly to the Board, or a committee thereof, which shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Board, or a committee thereof, and not through any intervening party.

(6) All audit reports shall be in writing. The Board, or a committee thereof, shall direct that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that auditors maintain a written record describing those actions.

(7) The audit staff shall have access to any records necessary for the proper conduct of its activities. National bank examiners shall have access to all reports and work papers of the audit staff and any other parties working on its behalf.

(8) Upon adoption, a copy of the internal audit program shall be promptly submitted to the Director.

ARTICLE XV

VIOLATIONS OF LAW

(1) The Board shall cause Bank management to correct each violation of law, rule or regulation including those cited in the ROE. The monthly progress reports required by Article II of this Agreement shall include the date and manner in which each correction has been effected during that reporting period.

(2) Within sixty (60) days, the Board shall cause to be developed and implemented specific procedures to prevent future violations as cited in the ROE. The Board also shall cause to be developed and implemented general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(3) Upon adoption, a copy of these procedures shall be promptly forwarded to the Director.

(4) The Board shall cause the Bank to have the policies, processes, personnel, and control systems to ensure implementation of and adherence to the procedures developed pursuant to this Article.

ARTICLE XVI

CONFLICT OF INTEREST POLICY

(1) Within sixty (60) days, the Board shall review and revise, where appropriate, the Bank's written 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 Director for review.

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

ARTICLE XVII

CLOSING

(1) Although the Bank has agreed to submit certain programs and reports to the Director for review or approval, the Board has the ultimate responsibility for proper and sound supervision 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) 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 Director for good cause upon written application by the Board.

(4) 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.

(5) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC’s exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by

any extraneous expression, or prior agreements, arrangements, or negotiations between the parties, whether oral or written.

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

Signed

9/5/01

Ronald G. Schneck
Director of Special Supervision/Fraud
Office of the Comptroller of the Currency

Date

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.

Signed _____ David R. Bockel	4 Sep 01 _____ Date
Signed _____ Edward G. Bowen, M.D.	4 Sep 01 _____ Date
Signed _____ Kevin S. King	9-4-01 _____ Date
Signed _____ James B. Miller, Jr.	9-4-01 _____ Date
Signed _____ Larry D. Peterson	9-4-01 _____ Date
Signed _____ Robert J. Rutland	9/4/01 _____ Date
Signed _____ W. Clyde Shepard, III	9-4-01 _____ Date
_____ Gordon M. Sherman	_____ Date
Signed _____ Rankin M. Smith, Jr.	9-4-01 _____ Date
_____ Felker W. Ward, Jr.	_____ Date