

## SUPERVISORY AGREEMENT

This Supervisory Agreement ("Agreement") is made and is effective this 21 day of May, 1992 (the "Effective Date"), by and between Fidelity New York Federal Savings Bank (the "Association"), a federally chartered mutual association, having its main office located at 155 Jericho Turnpike, Floral Park, New York, and the Office of Thrift Supervision ("OTS"), an office within the Department of the Treasury, a department in the Executive Branch of the United States Government, having its principal executive offices located at 1700 G Street, N.W., Washington, D.C.

WHEREAS, the OTS is the primary federal regulator of the Association; and

WHEREAS, the OTS, represented by the Regional Director for the Northeast Region ("Regional Director") is of the opinion, based on a Report of Examination dated April 5, 1991, that the Association has engaged in acts and practices in operating the business of the Association that: (i) have resulted in violations of certain laws or regulations to which the Association is subject and/or (ii) are considered to be unsafe and unsound; and

WHEREAS, the OTS is of the opinion that grounds exist for the initiation of administrative proceedings against the Association; and

WHEREAS, the OTS is of the view that it is appropriate to take measures intended to ensure that the Association will: (1) comply with all applicable laws and regulations; (2) engage in safe and sound practices; and (3) maintain itself in a safe and sound condition; and

WHEREAS, the Association has corrected or has agreed to correct deficiencies noted in the April 5, 1991 Report of Examination and has demonstrated its willingness to cooperate with OTS in this regard, and the Board of Directors of the Association (the "Board") wishes to cooperate with the OTS and to demonstrate that they have the intent and ability to: (1) comply with all applicable laws and regulations; (2) engage in safe and sound practices; and (3) maintain the Association in a safe and sound condition.

NOW THEREFORE, in consideration of the above premises, the mutual undertakings set forth herein, and other good and sufficient consideration, the parties hereto agree as follows:

I. COMPLIANCE WITH LAWS, REGULATIONS, AND CAPITAL PLAN CONDITIONS

1.01. (a) To the extent it has not already done so, the Association shall correct any deficiency noted in the Report and otherwise continue to comply with the following Federal laws and regulations:

(i). Section 5(t) of the Home Owners' Loan Act ("HOLA"), as amended, 12 U.S.C. Section 1464(t) (regarding capital requirements);

(ii). Sections 563.160 and 571.26 of the OTS Regulations, 12 C.F.R. Sections 563.160 and 571.26 (regarding classification of assets);

(iii). Section 563.172 of the OTS Regulations, 12 C.F.R. Section 563.172 (regarding real estate owned and in-substance foreclosure; re-evaluation of assets; adjustment of book value; adjustment charges);

(iv). Section 563.233 of the OTS Regulations, 12 C.F.R. Section 563.233 (regarding accounting principles and procedures);

(v). Section 566.2(c) of the OTS Regulations, 12 C.F.R. Section 566.2(c) (regarding calculation of average daily liquidity balance); and

(vi). Section 563.173(e) of the OTS Regulations, 12 C.F.R. Section 563.173(e) (regarding recordkeeping requirements for forward commitments).

(b) The Association shall comply with the following conditions of the Conditional Approval of Capital Plan dated May 18, 1990:

(i). The Association's approved Capital Plan projects capital gains of \$900,000 per quarter on the sale of investments. Accordingly, investments such as loans and securities may not be sold if they create capital gains in excess of \$900,000 per quarter, absent prior written approval of the Regional Director pursuant to Condition 1.A. of the Conditional Approval of Capital Plan.

(ii). Condition 2.A. requiring the Association to meet the quarterly interim capital targets set forth in its Capital Plan and reduce its capital deficiencies; and

(iii). Condition 5.A.(2) requiring the prior written approval of the District Director for any purchase of or payment for an item or service intended for the benefit of any officer or director costing more than \$300 that (A) does not have an immediate, direct relationship to the performance of the officer or director's duties or (B) is not available to all Association staff.

1.02. The requirements set forth in Section 1.01 that the Association conduct its business in conformity with the requirements of the Federal laws and regulations set forth therein shall not be construed as an authorization for the Association to engage in any activity permitted by said laws and regulations. Furthermore, to the extent that it is lawful for the Association or its affiliates to engage in such activities, they shall be subject to any stricter restrictions, limitations and requirements set forth in this Agreement.

## II. CORRECTIVE PROVISIONS

### 2.01. Director Responsibility

#### (a) Oversight

Each member of the Board of Directors owes fiduciary duties to the Association. Notwithstanding the requirements of this Agreement that the Board of Directors submit various matters to the Regional Director for the purpose of receiving his approval, non-objection or notice of acceptability, such regulatory oversight does not derogate or supplant each individual member's continuing fiduciary duty. The Board of Directors shall have the ultimate responsibility for overseeing the safe and sound operation of the Association at all times, including compliance with the determinations of the Regional Director as required by this Supervisory Agreement.

In particular, the Board shall take the following steps:

(i). The Board of Directors and the executive officers of the Association shall take appropriate action designed to cause the Association to comply with the terms of this Supervisory Agreement and shall take all actions necessary or appropriate thereafter to cause the Association to continue to carry out the provisions of this Agreement.

(ii). The Board, on a quarterly basis, shall adopt a Board Resolution (the "Compliance Resolution"), signed by each individual director, formally resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding quarter, the Association has complied with each provision of this Agreement currently in effect, except as otherwise stated. The Compliance Resolution shall: (A) specify in detail how, if at all, full compliance was found not to exist, and (B) identify all notices of exemption issued by the Regional Director that were outstanding as of the date of its adoption.

(iii). The minutes of the meeting of the Board shall set forth the following information with respect to the adoption of each Compliance Resolution: (A) the identity of each Director voting in favor of its adoption; and (B) the identity of each Director voting in opposition to its adoption or abstaining from voting thereon, setting forth each such Director's reasoning for opposing or abstaining.

(iv). No later than the 25th Business Day of the month following the end of a calendar quarter, beginning with the end of the first calendar quarter following the Effective Date, the Association shall provide to the Regional Director a certified true copy of the Compliance Resolution adopted by the Board. The Board, by virtue of the Association's submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be deemed to have confirmed the accuracy of the statements set forth in such Compliance Resolution, except as provided below. In the event that one or more Directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the Association.

#### (b) Fiduciary Duty to the Association

Each member of the Board of Directors, as part of the performance of his or her duty of care, shall become familiar with the contents of the Director Information Guidelines, published by OTS in December 1989 and shall act in a fashion consistent with such guidelines.

#### 2.02. Monitoring System to Ensure Compliance

If it has not already done so, the Board of Directors and management shall establish and implement a monitoring system designed to ensure that the Association is complying with this Supervisory Agreement; which system may be the existing system designed to ensure compliance with its Capital Plan and the Conditional Approval of the Capital Plan dated May 18, 1990.

#### 2.03. Appraisals

If it has not already done so, the Association shall submit current appraisals to the OTS for review on the Riverdale, 100 Fairfield Avenue, Tudor City, and Anjo Realty properties, and order an appraisal on the Kensington-Johnson property (which asset is involved in litigation), as well as other properties cited for lack of appraisals in the April 5, 1991 Report of Examination.

#### 2.04. Internal Asset Review Policy

If it has not already done so, the Board of Directors shall amend the internal asset review policy as follows, pursuant to the April 5, 1991 Report of Examination:

(a) Require documentation of asset classifications, as well as the reasons for classifications;

(b) Address net realizable value versus fair value and state when these calculations will be utilized;

(c) Problem assets should be reviewed at least quarterly;

(d) Address consumer loan charge-offs in accordance with OTS regulations; and

(e) Address treatment of real estate owned properties.

#### 2.05. Valuation Allowances

The Association shall: (a) evaluate the adequacy of its valuation allowances at least quarterly; (b) maintain reasonable records to support the Association's selection of a particular level as adequate; and (c) maintain adequate valuation allowances based thereon.

The Association shall not adjust downward its valuation allowances without the prior written non-objection of the Regional Director. In requesting any such non-objection, the Association shall provide OTS with a detailed analysis supporting the proposed reduction.

If it has not already done so, the Board of Directors shall amend the valuation allowance policy to establish appropriate ratios for determining general valuation allowances for criticized assets and unclassified portions of the loan portfolio.

In addition, if it has not already done so, the Board of Directors shall establish a committee of Board members to oversee the valuation allowance process, which shall include, but not be limited to: (a) a quarterly review and establishment of adequate valuation allowances and (b) a review of quarterly calculations of the net realizable value ("NRV") and fair value ("FV") of real estate properties over \$1 million. The person(s) assigned responsibility for the valuation allowance process shall report directly to the Board committee. The Board shall submit to the OTS a quarterly report of its review. The report shall include NRV and FV calculations.

Within thirty days of the receipt of any Report of Examination from the OTS, the Association shall eliminate from its books by collection, charge-off, or other proper entries, 100 percent of all assets classified Loss in such Report of Examination, provide however, that nothing in this paragraph shall prevent the Association from disputing any such classification in good faith.

2.06. In-substance Foreclosures

If it has not already done so, within 60 days from the date of this Supervisory Agreement, the Board shall adopt and implement a policy for determining in-substance foreclosures. The policy shall, among other things: (a) require proper accounting of such foreclosures and (b) require that the Association obtain fair market value appraisals upon a determination that an in-substance foreclosure exists, in accordance with Section 563.172(a) of the OTS Regulations.

2.07. Appraisals of Real Estate Owned

In accordance with Section 563.172(a) of the OTS Regulations, the Association shall appraise each parcel of real estate owned at the time of acquisition, unless an appraisal has been obtained earlier due to a determination that an in-substance foreclosure exists.

2.08. Investment Policy

If it has not already done so, the Board of Directors shall amend the Association's investment policy and procedures to correct the deficiencies noted in the April 5, 1991 Report of Examination. Specifically, the policy shall comply with TB-52 and address, among other things:

(a) with regard to investments in mortgage derivative products:

(i). required pre-purchase and ongoing sensitivity analysis; and

(ii). when competitive price quotes for purchase and sales transactions will be required;

(b) strategies shall be documented for each type of security;

(c) strategies shall not be permitted that require a level of expertise beyond that possessed by management;

(d) the type, nature, dollar amount, and anticipated maturity shall be documented for each investment category anticipated to be used to achieve a strategy;

(e) when establishing parameters for investments and off balance sheet activity, consideration shall be given to both the credit risk and interest rate risk inherent in the individual investment as well as in the overall balance sheet;

(f) address the use of hedging techniques;

(g) establish a list of securities authorized for purchase;

(h) establish safekeeping procedures;

(i) establish settlement procedures;

(j) If regulatory permissible, establish maximum monthly volume and loss levels for trading; and

(k) require that investment transactions be accounted for in accordance with Generally Accepted Accounting Principles.

(l) securities activities undertaken for investment, sale or trading must be distinguished.

#### 2.09. Liquidity Policy

If it has not already done so, the Board of Directors shall adopt and the Association shall implement a liquidity policy and procedures to monitor compliance with regulatory requirements of Part 566 of the OTS Regulations.

#### 2.10. Maintenance of Workpapers

Pursuant to Section 563.233 of the OTS Regulations, the Board shall direct management to maintain workpapers which support the figures reported in the Thrift Financial Reports.

#### 2.11. Expense Policy

If it has not already done so, the Board of Directors shall adopt resolutions regarding reimbursable expenses for officers and directors, as well as procedures for reviewing and approving allowable expenses. The policy shall address, among other things, levels of allowable expenses for training and business travel. In addition, the policy shall incorporate the condition relating to expenses contained in subparagraph 5.A.(2) of the Conditional Approval of Capital Plan dated May 18, 1990.

#### 2.12. Golden Parachute and Indemnification Payments

The Association shall not make any golden parachute payment or indemnification payment to any person, without the prior written non-objection of the Regional Director.

### III. MISCELLANEOUS

#### 3.01. Definitions:

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) the terms used in this Agreement have the meanings assigned to them in this Section and include the plural as well as the singular; (b) all accounting terms not otherwise defined have the meanings assigned to them in accordance with Generally Accepted Accounting Principles in the United States, except that if such terms are defined in the Rules and Regulations of the OTS, such regulatory definitions shall be controlling; (c) all terms not otherwise defined herein that are defined in the HOLA, the FDIA, FIRREA, the Rules and Regulations of the OTS or its publicly available Bulletins and Advisory Memoranda shall have the meanings assigned to them in such statutes, Rules and Regulations, Bulletins, and Advisory Memoranda; and (d) all technical words or terms not subject to a definition in this Agreement shall have the meanings that accord with the best custom and usage in the thrift and banking industries.

"Advisory Memoranda" refers to inter alia, R Memoranda and T Memoranda issued by the staff (or agents) of the OTS (or its predecessors in interest).

"Board Resolution" means a resolution duly adopted by the Board of Directors at a duly called and held meeting of the Board (or a Committee thereof) at which a quorum was present.

"Bulletins" refers to, inter alia, Regulatory Bulletins and Thrift Bulletins issued by the staff (or agents) of the OTS (or its predecessors in interest).

"Business Day" means any weekday excluding Federal holidays.

"FDIA" means the Federal Deposit Insurance Act, as amended, 12 U.S.C. Sections 1811 et seq.

"FIRREA" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183.

"Golden parachute payment" shall have the meaning set forth in Section 1828(k) of the FDIA, 12 U.S.C. Section 1828(k).

"HOLA" means the Home Owners' Loan Act, as amended, 12 U.S.C. Sections 1461 et seq.

"Indemnification payment" shall have the meaning set forth in Section 1828(k) of the FDIA, 12 U.S.C. Section 1828(k).

"Officer" shall have the meaning set forth in Section 561.35 of the OTS Regulations, 12 C.F.R. Section 561.35.

"OTS" refers to the Office of Thrift Supervision, United States Department of the Treasury, or its successor.

"Regional Director" or his successor is the "senior supervisory official" within the meaning of Section 723(d) of the FIRREA, and refers to the Regional Director of the Northeast region of OTS. All references to the Regional Director shall include the Regional Director and/or his designee(s).

"Savings Association" shall have the meaning set forth in Section 2(4) of the HOLA, 12 U.S.C. Section 1462(4).

"Security or Securities" shall have the meaning set forth in Section 561.44 of the OTS Regulations, 12 C.F.R. Section 561.44.

"Subsidiary" or "subsidiaries" shall have the meaning set forth in Section 567.1(dd) of OTS Regulations, and subsidiaries of such entities.

### 3.02. Imposition of Restrictions/Requirements on Subsidiaries

The Association shall cause all Subsidiaries in which the Association owns a majority of the stock to abide by the restrictions, limitations or requirements imposed on the Association by this Supervisory Agreement. The Association shall also vote its shares, use its influence and otherwise use its best efforts to impose the same restriction on any Subsidiary of which the Association owns a minority of the stock. The Association shall immediately notify the Regional Director in the event that the actions of any Subsidiary would contravene the restrictions, limitations or requirements of this Supervisory Agreement if undertaken directly by the Association.

### 3.03. Successor Statutes, Regulations, Guidance, Amendments

Reference in this Supervisory Agreement to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

### 3.04. Notices

(a) Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Agreement to be made upon, given or furnished to, delivered to, or filed with:

(i). the OTS by the Association, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302, or telecopied to (201)413-7543 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

(ii). the Association by the OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case addressed to the Association at 155 Jericho Turnpike, Floral Park, New York or telecopied to (516)747-2257 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

(b) Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Agreement, then, in the event such notice was sent by the United States mail, there shall be a presumption that the notice was received four Business Days after the date of the postmark on the envelope in which the notice was enclosed.

### 3.05. Duration, Termination or Suspension of Agreement

(a) This Supervisory Agreement shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director or the Regional Director (including any authorized designee thereof).

(b) The Regional Director or his designee, in his or her sole discretion, may, by written notice, suspend any or all provisions of this Supervisory Agreement.

### 3.06. Effect of Headings

The Section headings herein are for convenience only and shall not affect the construction hereof.

### 3.07. Separability Clause

In case any provision in this Agreement is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

3.08. No Violations of Law, Rule, Regulation or Policy Statement Authorized

Nothing in this Agreement shall be construed as (i) allowing the Association to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting, in any way, the OTS from taking any action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law.

3.09. Successors in Interest/Benefit

The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Agreement, express or implied, shall give to any person or entity, other than the parties hereto, the Resolution Trust Corporation, and the Federal Deposit Insurance Corporation and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Agreement.

3.10. Signature of Directors

Each Director signing the Agreement attests, by such act, that she or he, as the case may be, voted in favor of the resolution, in the form attached to this Agreement, authorizing the execution of this Agreement by the Association.

3.11. Enforceability of Agreement

The Association represents and warrants that this Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Association. The Association acknowledges that this Agreement is a "written agreement" entered into with the OTS within the meaning of Section 8 of the FDIA, 12 U.S.C. §1818.

3.12. Effect on Capital Plan Approval Conditions

The Conditional Approval of Capital Plan dated May 18, 1990 remains in full force and effect. In the event of a conflict between the terms of the Conditional Approval of Capital Plan and this Supervisory Agreement, the Association shall immediately notify the Regional Director and, until otherwise directed by the Regional Director, shall adhere to the more restrictive provision.

3.13. Relationship to FDICIA

To the extent that any provision of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2236 (December 19, 1991) ("FDICIA") or any regulation(s) promulgated thereunder relating to under-capitalized depository institutions imposes more restrictive requirements than any provision contained in this Supervisory Agreement (either expressly or through OTS interpretive Bulletins or policy statements), such provision(s) of the FDICIA or such regulation(s) shall be controlling.

IN WITNESS WHEREOF, the OTS, acting by and through the Regional Director and the Association, in accordance with a duly adopted resolution of its Board (copy attached hereto), hereby execute this Agreement as of the Effective Date.

OFFICE OF THRIFT SUPERVISION

THE ASSOCIATION

By:

By:

15/  
Angelo ~~X~~. Vigna ~~V~~  
Northeast Regional Director

15/  
Name: Thomas Dixon Lovely  
Chief Executive Officer

DIRECTORS OF THE ASSOCIATION

15/  
Director

CERTIFIED COPY OF  
RESOLUTION OF BOARD OF DIRECTORS

I, the undersigned, being the duly appointed and qualified Secretary of Fidelity New York FSB ("the Association") hereby certify as follows:

1. A duly called meeting of the Board of Directors of the Association was held on May 20, 1992;

2. At said meeting a quorum was present and voting throughout;

3. The following is a true copy of resolutions duly adopted by the Association's Board of Directors, which resolutions have not been rescinded or modified and are now in full force and effect:

WHEREAS, the Board of Directors of the Association wishes to cooperate with the OTS and to demonstrate that said Board and the Association have the intent and ability to: (1) comply with all applicable laws and regulations; (2) engage in safe and sound practices; and (3) maintain the Association in a safe and sound condition; and

WHEREAS, the Directors of the Association have read and considered the proposed Supervisory Agreement ("Agreement") which shall be attached to the minutes of this meeting; and

WHEREAS, after due consideration, the Directors of the Association have determined to cause the Association to enter into the proposed Agreement which is in the best interest of the Association;

NOW THEREFORE, BE IT RESOLVED, that the Association be and it hereby is authorized to enter into the Agreement in the form attached to the minutes of the meeting,

FURTHER RESOLVED, that the execution and delivery of, and performance of all of the provisions of, the Agreement, be and they hereby, are authorized and approved,

FURTHER RESOLVED, that the Directors and Officers of the Association be, and they hereby are, authorized and directed to execute and deliver the Agreement and to take all steps necessary or appropriate to implement the terms of the Agreement and to cause the Association to comply in all respects with the terms of the Agreement.

4. All members of the Board of Directors were present and voted at the meeting (except \_\_\_\_\_) and all members of the Board of Directors (except \_\_\_\_\_) voted in favor of the resolution;

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of the Association on this 20th day of May 20, 1992.

15/  
Name: Judy-Ann Whalen  
Title: Corporate Secretary

(SEAL)