

OPERATING AGREEMENT

This Operating Agreement ("Agreement") is made and is effective this 9th day of October, 1990, by and between First Federal Savings and Loan Association of Pittsburg, Pittsburg, Kansas, Docket No. 02711 ("Institution") for itself and any wholly-owned or partly-owned subsidiary, and the Office of Thrift Supervision ("OTS"). This Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Institution. It is understood and agreed that this Agreement is a "written agreement" entered into with the OTS within the meaning of 12 U.S.C. §§ 1818(b)(1), (e)(1) and (i)(2) as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73 ("FIRREA").

WHEREAS, the board of directors of the Institution has reviewed the operations and financial condition of the Institution and finds that the present condition of the Institution justifies and requires action by the board of directors of the Institution for the benefit of the Institution and its depositors, other creditors, and borrowers; and

WHEREAS, the Institution's board of directors acknowledges the supervisory rights, powers, and authority of the OTS, with respect to the Institution under the statutes and regulations that govern the operations of the Institution;

WHEREAS, the Institution has insufficient capital to meet the minimum requirements set forth in 12 C.F.R. Section 567 as republished in 54 Fed. Reg. 49411, 49649-49662 (November 30, 1989) and the capital plan submitted by the Institution has been disapproved by written notice on July 31, 1990, for the reasons cited therein;

WHEREAS, the board of directors acknowledges that grounds for the appointment of a conservator or receiver, pursuant to Section 5(d)(2) of the Home Owners' Loan Act ("HOLA"), as amended by FIRREA, 103 Stat. 183, 277-343 (1989) (codified at 12 U.S.C. § 1464(d)(2)) exist when an Institution has substantially insufficient capital;

WHEREAS, the OTS is willing to forbear at this time from the initiation of cease-and-desist proceedings against the Institution as the result of the Institution's failure to meet its regulatory capital requirement in accordance with 12 C.F.R. Section 567.2 (previously 12 C.F.R. Section 563.13), as long as the Institution is in compliance with the provisions of this Agreement; and

WHEREAS, in the interest of regulatory compliance and cooperation, the Institution is willing to enter into this Agreement to avoid the initiation of such cease-and-desist proceedings;

NOW, THEREFORE, in consideration of the above-stated forbearance, it is agreed between the parties hereto as follows:

1. The OTS, represented by the District Director for the Topeka District or his designee ("Assistant Deputy District Director of Supervision"), is hereby authorized to negotiate a plan

of merger, consolidation, transfer of the Institution's assets and liabilities, reorganization, acquisition of, or capital infusion for the Institution ("plan of combination or reorganization") and to draft proposed documents for any such plan of combination or reorganization.

2. The board of directors immediately shall take under consideration any plan of combination or reorganization that is forwarded and recommended to the board of directors by the District Director; shall promptly approve any such plan of combination or reorganization under which the board of directors determines that the interests of the depositors, other creditors, and borrowers of the Institution are protected; and shall not disapprove any such plan of combination or reorganization, except for reasonable cause, consistent with the fiduciary duties of the board of directors, stated in writing.

3. The board of directors shall recommend to the members of the Institution any plan of combination or reorganization approved by the board of directors pursuant to paragraph 2 of this Agreement, if approval of the members or a portion thereof, is necessary to effect such plan.

4. The Institution shall, at the direction of the OTS, take all corporate actions necessary to effect a plan of combination or reorganization approved by the OTS, the board of directors, and if necessary, the members of the Institution.

5. The Institution by this Agreement consents to the appointment of a conservator or receiver or other legal custodian for the Institution by the OTS.

6. The books and records of the Institution and of any wholly-owned or partly-owned subsidiary of the Institution, upon the request of the District Director, shall be made available to the representatives of any institution, person, or entity negotiating with the OTS concerning a plan of combination or reorganization upon execution of a confidentiality agreement acceptable to the District Director and at such times and in a manner which will least interfere with the on-going activities and business of the Institution.

7. The Institution shall use its best efforts to discourage the acceptance or renewal of any uninsured deposit.

8. The directors of the Institution hereby resolve and agree to resign from the board of directors and any officer position at the Institution and to terminate the employment of any officer or employee of the Institution or any person acting in that capacity at the request of the District Director, at such time and in such order as the District Director shall request, consistent with the fiduciary duties of the board of directors.

9. The directors of the Institution who are directors of a wholly-owned or partly-owned subsidiary of the Institution hereby resolve and agree to resign from the board of directors and any officer position of any such subsidiary and to terminate the employment of any officer or employee of such subsidiary or any person acting in that capacity at the request of the District Director, at such time and in such order as the District Director shall request, consistent with the fiduciary duties of the board of directors.

10. The Secretary or an Acting Secretary of the Institution resolves and agrees to request, upon the request of the District Director, the resignation of any or all the directors and any officer or employee of any wholly-owned or partly-owned subsidiary of the Institution or any person acting in that capacity.

11. The board of directors of the Institution and each director of the Institution resolves and agrees to elect as director(s) or officer(s) any person(s) recommended by the District Director to fill any vacancy(ies) in the directorate or management of the Institution, consistent with the fiduciary duties of the board of directors.

12. The board of directors shall take any steps necessary to amend the bylaws of the Institution to provide for such number of directors as the District Director shall recommend or to effect the election of any person(s) to the board of directors who is (are) recommended by the District Director, consistent with the fiduciary duties of the board of directors.

I. DEFINITIONS

13. For the purposes of this Agreement, except as otherwise indicated, the following definitions shall apply:

- a. a "set" is a group of loans, participations, investments, securities, or other assets related, by being sold or

pledged to, purchased from, or exchanged with any persons, entities, or institutions acting together in a single transaction;

- b. "invest in" means to make, originate, purchase, acquire, guarantee, refinance, modify, extend, renew, or to commit to do any of these;
- c. "transfer" means to sell, assign, pledge, exchange, or to commit to do any of these;
- d. "real estate investment" means the net book value of real estate purchased, acquired by foreclosure or deed in lieu thereof, or owned in any manner, inclusive of any expenditures incurred in connection with holding or improving such real estate and following adjustment for any loss reserves or allowances.

14. All technical words or terms used in this Agreement, for which meanings are not specified or otherwise provided by the provisions of this Agreement, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, or the Federal Deposit Insurance Act ("FDIA"), and any such technical words or terms used in this Agreement and undefined in said Code of Federal Regulations, HOLA, or FDIA shall have meanings that accord with the best custom and usage in the savings and loan industry.

15. All statutory and regulatory citations herein shall be in the form as codified or promulgated as of the date of this Agreement, or as amended or renumbered thereafter.

16. Reference in this 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 of this Agreement and references to successor provisions as they become applicable.

II. OPERATING RESTRICTIONS

17. Except for existing legally binding commitments and investments that qualify as liquid assets under 12 C.F.R. Section 566.1 (previously 523.10) (1990), without prior written approval of the District Director for the Topeka District or his designee ("District Director" or "Assistant Deputy District Director of Supervision") the Institution shall not, and shall not allow any wholly-owned or partly-owned subsidiary or affiliate of the Institution to:

- a. engage in forward commitments, futures transactions, or financial options transactions as defined in 12 C.F.R. Sections 563.173, 563.174 and 563.175 (previously 563.17-3, 563.17-4 and 563.17-5) (1990);
- b. invest in any loans or contracts secured by real estate or participations therein (including any acquisition,

construction and development loans) or any set of such loans or participations, except loans made at current market interest rates and terms which are:

(1) to finance the bona fide purchase of, or custom construction of, or refinance owner-occupied single-family residences secured by first liens on such properties that do not exceed in each case \$250,000; or

(2) secured by second liens on existing owner-occupied, single-family residences where the loan to value ratio of the first and second liens combined does not exceed 80 percent and the combined debt does not exceed \$250,000;

c. invest in any real estate investment or set of such investments, except to the extent necessary to preserve the existing real estate investment on property foreclosed on by the Institution or investments in real estate that otherwise result in such investments becoming "real estate owned" by the Institution; provided such expenditures do not exceed \$20,000;

d. transfer any real estate investment (i.e., real estate owned) or set of such investments unless such investments or set of such investments have a net book value less than \$250,000, or, irrespective of the foregoing sum, the loss to be recognized upon such transfer does not exceed the greater of 15 percent of the net book value of such investments or \$20,000;

- e. invest in or transfer any security or set of securities except mortgage-backed securities issued by the Federal Home Loan Mortgage Corporation ("FHLMC"), Government National Mortgage Association ("GNMA"), or the Federal National Mortgage Association ("FNMA");
- f. transfer any loan secured by real estate or participation therein or any set of such loans or participations if the net book value of any such loan or participation exceeds \$250,000, except loans made at current market interest rates and terms to finance bona fide purchases of, or refinance existing owner-occupied one- to four-family residences secured by a first lien on such residences; except loans secured by one- to four-family residences conforming to FNMA, GNMA and FHLMC guidelines purchased through the secondary market; and, except that the Institution may transfer loans for which the loss does not exceed 10 percent of the principal balance of the loans being sold;
- g. invest in or transfer commercial loans or letters of credit, whether secured or unsecured;
- h. invest in any consumer, education, or home improvement loan in excess of \$20,000; except an insured education loan or share loan;
- i. except for individual merit increases in accordance with its standard personnel policy in effect at the time this Agreement is presented by the Assistant Deputy District Director of Supervision for execution, and normal

periodic employee salary and wage increases scheduled prior to the effective date of this Agreement and that comply with 12 C.F.R. Section 563.161 (previously 563.17) (1989), increase in excess of 5 percent, on an annualized basis, in the rate of compensation to any of its officers, employees, agents, or other representatives, or agree to do so. Notwithstanding any other provision of this subparagraph, the Institution may increase the compensation of non-officer employees, if the annualized compensation of such employee before any increase does not exceed \$30,000 and the aggregate increase or increases for any employee do not exceed 10 percent during any calendar year;

- j. employ or appoint any person to serve as an officer, director, or senior manager who is not so employed or appointed as of the date of this Agreement; employ any person who is not so employed as of the date of this Agreement at a rate of compensation which, on an aggregate of an annualized basis, exceeds \$30,000 per year; employ any person pursuant to an agreement that is not terminable at the will of the employer and that otherwise does not comply with 12 C.F.R. Section 563.39 (1990); or enter into or amend or renew any collective bargaining agreements, pension or profit sharing, bonus, severance pay, retirement, fringe benefit, or other employee benefit plans, or other employment contracts with any employee, director, or officer;

- k. any compensation, either direct or indirect, paid to directors in excess of \$300 per director, per month, shall require the prior written approval of the Assistant Deputy District Director of Supervision;
- l. enter into, renew or revise any contractual arrangement with any officer, director, controlling person, affiliate, subsidiary, affiliated person, attorney, consultant, or agent for or of the Institution or any of its subsidiaries; except that the Institution may submit a list of its current contractual agreements with lawyers, accountants and other consultants for approval together with a fee schedule previously approved by the board;
- m. invest in or increase its investment in any service corporation or any subsidiary thereof or finance subsidiary. For the purposes of this subparagraph, "invest in" shall include, but is not limited to, the making of investments in securities issued by such entities, and the extensions of credit to, or the guaranteeing of the debt of, such entities;
- n. enter into any repurchase or reverse repurchase agreement obligation arising from a transfer of government securities except for reverse repurchase agreements and dollar rolls, the effect of which would not increase the aggregate outstanding borrowing of such reverse repurchase agreements and dollar rolls to an amount in excess of the amount existing as of the effective date of

this Agreement, subject to the specific limitations of paragraph 18 of this Agreement, or except as may otherwise be permitted by this Agreement;

- o. enter into any form of a binding letter of intent with a proposed acquirer of the Institution;
- p. enter into any lease or contract for the purchase of real estate or of any interest therein except in the ordinary and usual course of its business; provided, that the lease of one- to four-family dwellings shall be considered in the ordinary and usual course of business;
- q. enter into any contract or any agreement for the purchase, sale, or lease of goods, materials, equipment, supplies, services, or capital assets in an amount in excess of \$10,000, except in the ordinary and usual course of its business;
- r. enter into any joint venture agreements;
- s. amend or permit the members to be amend (except as may be required by law), its charter or bylaws except as directed by the Assistant Deputy District Director of Supervision and approved by the board of directors of the Institution;
- t. make any material change in accounting method;
- u. enter into any binding agreement to merge, consolidate, or otherwise be acquired, or to reorganize except in connection with a plan of combination or reorganization recommended or approved by the Assistant Deputy District Director of Supervision;

- v. notwithstanding any other provision within this Agreement, invest in any mortgage derivative financial instrument, stripped interest certificate, collateralized mortgage obligation, Real Estate Mortgage Investment Conduit ("REMIC"), REMIC Regular Interest, REMIC Residual Interest, or any below investment grade security (i.e., high-yield or "junk" bonds), except the Institution's current mortgage derivative portfolio is to be considered as "held for sale" and immediately marked-to-market. The Institution shall use its best efforts to dispose of the portfolio as soon as possible;
- w. enter into any transaction which does not require inclusion on the balance sheet of the Institution under then current generally accepted accounting principles including, but not limited to, mortgage swaps, interest rate caps, interest rate swaps, and interest rate collars;
- x. incur any material obligation or liability, except in the ordinary and usual course of its business;
- y. enter into any material transaction, except as provided in this Agreement or other than in the ordinary and usual course of business; or
- z. invest in or otherwise purchase any mortgage loan servicing rights or excess servicing rights.

III. GROWTH

18. As of July 31, 1990, the date the Institution was notified that it was subject to growth restrictions, the Institution shall not increase its adjusted total assets without the prior approval of the District Director or his designee.

IV. OPERATING PLAN

19. Within 90 days after the effective date of this Agreement, the board of directors shall prepare and submit to the Assistant Deputy District Director of Supervision for review and comment, a detailed written one year operating plan which will include a projection of balance sheet and income statement components. Procedures also shall be established to monitor the Institution's actual results against the projections in the operating plan and to provide for appropriate adjustments to the operating plan. Such variance reports and adjustments to the operating plan shall be submitted to the Assistant Deputy District Director of Supervision within 25 days after the end of each quarter.

20. Notwithstanding any other provision herein, the Institution shall have the right at any time to submit, and the OTS shall in good faith consider, a new revised capital plan which complies with all applicable laws, regulations, Thrift Bulletins,

("TB") including but not limited to TB 36a, dated March 8, 1990, and OTS Memoranda, as they exist now or in the future and any additional changes or amendments thereto.

V. REPORTING REQUIREMENTS

21. Within 45 days after the effective date of this Agreement, the Institution shall provide a list of all material pending litigation involving the Institution or its subsidiaries to the Assist Deputy District Director of Supervision. Such list shall include: (a) the name of the parties involved; (b) a description of the transaction(s) which form the basis of the litigation; (c) the name of the law firm and attorneys representing the Institution or its subsidiaries; (d) the status of the litigation; and (e) if requested by the Assistant Deputy District Director of Supervision, an estimate of the potential liability of the Institution or its subsidiaries. The Institution shall provide an updated list to the Assistant Deputy District Director of Supervision within ten days of the end of each quarter.

22. Within 45 days after the effective date of this Agreement, the Institution shall submit a list of the material contingent liabilities of the Institution and its subsidiaries (e.g., standby letters of credit, loans or participations sold with recourse, buy-back agreements). Such list shall include: (a) the

name of the parties involved; (b) a description of the transaction(s) which form the basis for the contingent liabilities of the Institution or its subsidiaries; and, (c) the date and the nature of the expected resolution or the termination of the contingent liability. The Institution shall provide an updated list to the Assistant Deputy District Director of Supervision within ten days of the end of each quarter.

23. The Institution shall comply fully with the requirements of 12 C.F.R. Section 563.172 (1990), as it pertains to the Institution's obligation to obtain an appraisal on each parcel of real estate owned at the time of the Institution's acquisition of such property and at such times thereafter as dictated by prudent management policy.

24. No later than the last day of each calendar month, the board of directors shall file with the Assistant Deputy District Director of Supervision a resolution, similar to the attached resolution, signed by each director, certifying that the Institution has complied with all conditions of this Agreement.

25. The Institution shall file all financial reports required by the OTS including monthly and quarterly reports by the required due date and such other reports requested by the Assistant Deputy District Director of Supervision by the requested due date.

26. This Agreement shall remain in effect until terminated, modified, amended, or suspended by the OTS, acting through the District Director or his designee. The District Director or his designee may suspend, in his or her sole discretion, any or all provisions of this Agreement.

Nothing in this Agreement shall be construed as allowing the Institution to violate any law or regulation to which it is subject.

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.

IN WITNESS WHEREOF, the OTS, acting through the District Director, and the Institution, by its duly elected directors, have executed this Agreement on the date first above written.

By: 15/

For the District Director of the
Office of Thrift Supervision
Topeka District

First Federal Savings and Loan
Association of Pittsburg
Pittsburg, Kansas

By: The Board of Directors

By: 15/
Director

15/
Director

15/
Director

15/
Director

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Director

Director

Director

Director

RESOLUTION

WHEREAS, the board of directors of First Federal Savings and Loan Association of Pittsburg, Pittsburg, Kansas has been required to make certain certifications regarding the activities as outlined in the Operating Agreement dated _____, 1990, and

WHEREAS, the board of directors have reviewed certain activities and transactions with senior officers of the Institution occurring during the month of _____, 1990;

NOW, THEREFORE, BE IT RESOLVED, that based upon reports and information provided to the undersigned directors by the senior officers of the Institution, the undersigned members of the board of directors hereby certify that, to the best of our knowledge and belief, First Federal Savings and Loan Association of Pittsburg has complied with all conditions of the Operating Agreement during the month of _____, 1990.

DATE: _____