Docket #2672

94850

AMENDED SUPERVISORY AGREEMENT

THIS AGREEMENT ("Agreement") is made and is effective this 22 day of November, 1993 ("Effective Date"), by and between **First Federal of Michigan,** Detroit, Michigan (OTS No. 02672) ("Institution") for itself 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. Sections 1818(b)(1) and (i)(2).

WHEREAS, the OTS is of the opinion that the Institution has not complied with certain of the statutes and regulations which the Institution is subject to in conducting the business of the Institution and has engaged in unsafe or unsound practices in conducting the business of the Institution, thereby providing grounds for the initiation of administrative proceedings against the Institution by the OTS, pursuant to 12 U.S.C. Section 1818(b); and

WHEREAS, the OTS is willing to forbear at this time from the initiation of administrative proceedings, pursuant to 12 U.S.C. Section 1818(b), against the Institution for its failure to comply with statutes and regulations, and unsafe and/or unsound practices as set forth in the Institution's Reports of Examination dated December 26, 1989, December 5, 1990, and July 8, 1991 (collectively the "Examinations"), for so 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, by its Board of Directors, is willing to enter into this Agreement to avoid the initiation of such administrative proceedings; however, the execution of this Agreement is not to be construed as an admission nor as a denial that such grounds exist.

NOW, THEREFORE, in consideration of the above-stated forbearance by the OTS from the initiation of administrative proceedings, pursuant to 12 U.S.C. Section 1818(b), against the Institution, it is agreed between the parties hereto as follows:

1. **Amendment**

   In consideration of the execution of this Agreement, the Supervisory Agreement dated December 31, 1991 is terminated. Nothing herein shall be construed as preventing the OTS from enforcing the terms of the Supervisory Agreement dated December 31, 1991 for violations occurring prior to the date of this Agreement.

2. **Business Plan**

   (a) The Institution shall prepare and submit to the Regional Deputy Director for prior written approval, within ninety (90) days after each calendar year end, a four-year Business Plan that shall, at a minimum, include the following:

(i) A specific discussion of the Institution's overall business objectives and strategies.

(ii) Projected balance sheets and income statements under seven (7) interest rate scenarios. These scenarios shall include instantaneous parallel shifts in the then current yield curve of plus or minus 200 and 400 basis points, a stable yield curve, and two (2) non-parallel shifts in the yield curve. Specifically, (1) an increase in short-term rates while long-term rates remain constant, resulting in a flat yield curve; and (2) a decrease in long-term rates while short-term rates remain constant.

(iii) For all the above interest rate scenarios, except parallel and nonparallel shifts in the yield curve greater than $\pm$ 200 basis points and those which would result in less than a two percent (2%) rate for the 90-day Treasury yield, the projections shall, at a minimum, demonstrate how the Institution will achieve annual net interest income plus FHLB dividends in excess of net operating expenses, on a consolidated basis for the Institution, not to include its parent holding company.

(iv) Specific strategies, including time tables, for achieving the requirements of Sections (i), (ii) and (iii) of this Paragraph No. 2.

(v) A strategy for reducing the percentage (as of September 30, 1991) of the Institution's investment in assets funded by sources other than retail savings deposits. The Business Plan shall provide quarterly target levels for these reductions and a specific discussion of how these levels can be achieved.

(vi) Maintenance of the Institution's tangible capital ratio at a level not less than four percent (4%) as calculated pursuant to, and in accordance with, the Thrift Financial Report Instructions.

(vii) Separate detailed cost analyses and projections of the non-interest operating expense levels attributable to the wholesale and retail segments of the Institution's operations. Specifically, a detailed analysis of each individual expense item, its allocation to the wholesale and/or retail operations, the reason each amount is so allocated, and a discussion of the appropriateness of the level of each expense item.

(viii) An analysis of the Institution's liquidity position, including strategies and projections for maintaining adequate liquidity levels.

(b) The Business Plan shall be presented in a format which is in compliance with the documentation requirements of Thrift Bulletin 36a. In addition, the Business Plan shall provide a breakdown of the retail and brokered deposits as defined in 12 C.F.R. Section 337.6.

(c) Upon approval by the Regional Deputy Director, the Institution shall implement and comply with the Business Plan. Amendments to the Business Plan shall be submitted to the Regional Deputy Director for prior written approval.

(d) In the event that the OTS increases the minimum regulatory capital requirement during the term of this Agreement, and the Institution's Business Plan does not provide for sufficient new capital to meet this new requirement, the Institution agrees that it will submit a new plan within sixty (60) days after the written request of the Regional Deputy Director designed to meet the new requirements.

The new Business Plan shall supersede the original plan, and shall be completed subject to the time limits, format requirements, and all other requirements in Paragraph No. 2.

3. <u>Growth</u>

The Institution shall not increase its Assets in excess of $9.5 billion without prior written approval of the Regional Deputy Director. For purposes of this Paragraph No. 3, "Assets" shall be calculated pursuant to, and in accordance with, the Thrift Financial Report Instructions.

4. <u>Interest Rate Risk Exposure</u>

(a) The Institution shall maintain compliance with its Interest Rate Risk Policy Statement which provides that, at a minimum, positive net interest income and market value of portfolio equity are achieved under all TB-13 interest rate scenarios (0, ± 100, ± 200, ± 300, and ± 400 basis points). Provided, however, the Institution shall not be deemed to be in violation of this Agreement, if any of the TB-13 interest rate scenarios result in both (i) lack of positive net interest income and/or market value of portfolio equity; and (ii) less than a two percent (2%) rate for the 90-day Treasury yield. The Institution shall also achieve the net interest income requirements contained in Section (a)(iii) of Paragraph No. 2 of this Agreement within the timeframes established pursuant to Section (a)(iv) of Paragraph No. 2 of this Agreement. Any amendments to the Institution's Interest Rate Risk Policy Statement shall require prior written approval of the Regional Deputy Director.

(b) In addition, the Institution shall achieve, and thereafter maintain, compliance with the above parameters for market value of portfolio equity as measured by the OTS Thrift Bulletin No. 13 model.

(c) The Institution shall review the sensitivity of its net interest income and market value of portfolio equity under all TB-13 interest rate scenarios on at least a quarterly basis. On a monthly basis, the Institution shall review the sensitivity of the market value of portfolio equity under all TB-13 interest rate scenarios. This information shall be reported to the Regional Deputy Director as described in Paragraph No. 8(c) of this Agreement.

5. <u>Affiliate Transactions</u>

The Institution shall not enter into any transactions (including, but not limited to, covered transactions as defined in 12 C.F.R. Section 563.41(b)(7)), transfer any assets or liabilities, or engage in any other exchange with FirstFed Michigan Corporation without the prior written approval of the Regional Deputy Director.

6. <u>Capital Distributions and Dividends</u>

The Institution shall comply with all regulations governing capital distributions including 12 C.F.R. Section 563.134.

7. <u>Internal Audit</u>

The Board shall require that the internal audit department conduct a program to monitor the Institution's compliance with this Agreement and with policies and plans required by this Agreement. The internal audit department shall report directly to the Audit Committee as to the Institution's compliance on a quarterly basis. This report shall be included in the minutes of each Audit Committee meeting.

8. <u>Reporting Requirements</u>

(a) The Board of Directors shall, on a quarterly basis, formally resolve that, to the best of their knowledge and belief, and based upon a prudent review of management reports, during the previous calendar quarter the Institution and its subsidiaries complied with each condition of this Agreement, for each quarter-end period, except as otherwise stated. The resolution shall also set forth any exceptions, exemptions or modifications to any of the conditions of this Agreement which may have been approved by the Regional Deputy Director. The resolution shall specify in detail how, if at all, full compliance was found not to exist.

(b) By the thirtieth (30th) day of each month, the Institution shall submit to the Regional Deputy Director a copy of the minutes of each Board of Directors meeting (and minutes of all committee and/or subsidiary board of directors meetings) held during the preceding month. The provided materials shall include all schedules, resolutions, management reports, and information provided to the Board for its review and any attachments to the minutes.

(c) The Institution shall provide to the Regional Deputy Director a monthly written Market Value of Portfolio Equity Report by the thirtieth (30th) day of each month, beginning with the month immediately following the month in which this Agreement becomes effective and on the thirtieth (30th) day of each month thereafter. The Institution shall provide to the Regional Deputy Director a quarterly written Net Interest Income Sensitivity Report no later than the thirtieth (30th) day of the month following the end of each calendar quarter. The reports shall review the Institution's progress in its efforts to control interest rate risk in accordance with the Business Plan required pursuant to Paragraph No. 2 of this Agreement.

(d) The Institution shall also submit quarterly reports to the Regional Deputy Director no later than the thirtieth (30th) day of the month following the end of each calendar quarter, showing the Institution's actual and projected progress in achieving its target ratios established by the Business Plan pursuant to Paragraph No. 2 of this Agreement. Any amendments to the format of these reports or assumptions used in the model shall be subject to the prior written approval of the Regional Deputy Director.

(e) The Institution and its subsidiaries shall, upon request, furnish the Regional Deputy Director with such other written reports from the Institution or its subsidiaries that, in the OTS' opinion, are necessary to assure the OTS of compliance with the terms of this Agreement. A reasonable time shall be allowed for the production of any such written reports.

9. <u>Other Provisions</u>

(a) As used in this Agreement, the term "savings association" shall have the meaning as set forth in Section 2(4) of the Home Owners Loan Act, as amended ("HOLA").

(b) As used in this Agreement, the term "Regional Deputy Director" shall mean the Regional Deputy Director of the Indianapolis Office of the Central Region of OTS or any other official designated to perform the function by the Regional Director of OTS, or by the Director of OTS or its successor.

(c) Reference in this Agreement to provisions of statutes, regulations, and OTS memoranda shall be deemed to include references to successor provisions, as applicable.

(d) 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, and Federal Deposit Insurance Corporation Act, as amended ("FDIC Act"). Any such technical words or terms used in this Agreement and undefined in said Code of Federal Regulations, HOLA, FDIC Act, or OTS memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

(e) 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. This Agreement is the complete statement of the Agreement by and between the parties and supersedes all prior negotiations, understandings, and representations between them with respect to the subject matter of this Agreement.

(f) Materials required to be sent to the OTS pursuant to this Agreement shall be mailed to: Regional Deputy Director, Office of Thrift Supervision, 3500 DePauw Boulevard, Suite 2050, Indianapolis, Indiana 46209-6835.

(g) This Agreement shall remain in effect until terminated, modified, or suspended by the OTS, acting through the Regional Director or his or her designee. The Regional Deputy Director shall consider termination of this Agreement upon request by the Institution.

(h) This Agreement may be executed in counterparts and each counterpart shall be considered an original Agreement.

IN WITNESS WHEREOF, the OTS, acting through its Regional Director, and the Institution, by its Board of Directors, have executed this Agreement on the date first above written.

THE OFFICE OF THRIFT SUPERVISION

By: /s/
Ronald N. Karr, Regional Director
Central Region

FIRST FEDERAL OF MICHIGAN
Detroit, Michigan

By /s/
C. Gene Harling, Chairman

By /s/
Richard W. Neu, Director

By /s/
Gerald J. DeNooyer, Director

By /s/
Charles M. Heidel, Director

By /s/
Richard J. Jacob, Director

By /s/
Philip J. Meathe, Director

By /s/
Henry R. Nolte, Jr., Director

By /s/
Fred C. Reynolds, Director

By /s/
Jerome L. Schostak, Director

By /s/
Mark Shaevsky, Director

By /s/
Eresteen R. Williams, Director