

DK #0321

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### SUPERVISORY AGREEMENT

This Agreement ("Agreement") is made and is effective this 8th day of May, 1992 ("Effective Date"), by and between Mutual Savings Bank, FSB (OTS No. 321), Bay City, Michigan ("Institution") for itself and any controlled 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. Sections 1818(b)(1) and (i)(2).

WHEREAS, the OTS and its predecessor the Federal Home Loan Bank Board ("FHLBB") have been of the opinion that the Institution has not complied in the past with certain of the regulations to which the Institution is subject 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 cease and desist proceedings against the Institution by the OTS; and

WHEREAS, the OTS and the FHLBB have in the past taken enforcement actions against the Institution, including a Supervisory Agreement between the Institution and the FHLBB dated January 24, 1986, a Consent Agreement between the Institution and the OTS dated May 31, 1990; and a Cease and Desist Order issued by the FHLBB against the Institution dated August 15, 1988 (Enforcement Review Committee Resolution No. 88-59); and

WHEREAS, the Institution desires to consolidate the enforcement actions in force and effect; and

WHEREAS, the OTS is willing to consolidate the enforcement actions outstanding and to forbear at this time from the initiation of cease and desist proceedings against the Institution 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 ("Board"), is willing to enter into this Agreement.

NOW, THEREFORE, in consideration of the OTS' above-stated willingness to consolidate enforcement actions and to forbear from the initiation of cease and desist proceedings against the Institution, it is agreed between the parties hereto as follows:

#### Business Plan.

1. The Institution shall adhere to and comply with, in all material respects, the terms and provisions of the September 30, 1991 amendment to the Institution's April 30, 1991 Business Plan ("Business Plan"), except to the extent that the Institution obtains the prior written approval of the Deputy Regional Director or his/her designee to depart from one or more provisions thereof.

2. On or before November 15, 1992, and on or before each anniversary thereof, the Institution shall submit to the Deputy Regional Director or his/her designee, for prior written approval, a detailed amendment to the Institution's Business Plan covering the next three calendar years. The amendment called for in this Section 2 shall include, at a minimum:

- (a) Comprehensive narrative discussions of each significant activity and strategy to be used by the Institution;
- (b) Projected balance sheets and income statements by quarter for the Institution and its subsidiaries in the format provided by the Deputy Regional Director.

3. Upon approval by the Deputy Regional Director, the Institution shall implement and comply with the Business Plan. The Institution shall not implement changes to the operating plans and strategies outlined in the Business Plan referred to in Sections 1 and 2 without the prior written approval of the Deputy Regional Director or his/her designee.

Enforcement Documents.

4. On the Effective Date of this Agreement, the Cease and Desist Order issued by the FHLBB on August 15, 1988 (Enforcement Review Committee Resolution No. 88-59) and the Supervisory Agreement dated January 24, 1986 between the FHLBB and the Institution, are terminated.

5. (a) If:

- (i) prior to April 1, 1993, the Institution consummates a mutual to stock conversion; and
- (ii) immediately after that conversion the Institution has core capital greater than or equal to 4% of its adjusted total assets (as that term is defined in 12 C.F.R. Part 567) and meets all fully phased in capital requirements established under 12 C.F.R. Part 567;

then the Consent Agreement dated May 31, 1990 between the Institution and the OTS shall be terminated simultaneously with the effectiveness of the conversion.

- (b) At least two business days prior to the proposed closing of such mutual to stock conversion, the Institution shall submit to the OTS a certification of the chief financial officer of the Institution in substantially the form of Exhibit A hereto, together with a copy of a letter from the Institution's independent accountants in substantially the form of Exhibit B hereto with respect to the application of agreed-upon procedures in calculating the Institution's capital as of the date of conversion and a submission in the form of Schedule CCR, each dated as of the date of submission. The condition specified in clause 5(a)(ii) above shall be deemed to be satisfied upon the expiration of two business days after the OTS Indianapolis

Office receives such certification, letter and Schedule CCR, unless the OTS earlier notifies the Institution that the OTS has determined that such condition is not satisfied.

(c) As used in this Agreement, the term "fully phased in capital requirements" shall mean:

- (i) tangible capital equal to 3% of tangible assets;
- (ii) core capital equal to 3% of adjusted tangible assets; and
- (iii) risk-based capital equal to 8% of risk weighted assets.

In calculating compliance with the capital requirements of this clause 5, the Institution will exclude any items which would not be includable in calculating capital under 12 C.F.R. Part 567 as of January 1, 1995 and shall perform the calculation in accordance with the instructions for Schedule CCR of the Thrift Financial Reports.

(d) In making the calculation called for in clause 5(a)(ii) the Institution shall use general ledger balances as of a month ending date not more than two months prior to the date of conversion, adjusted for the net proceeds of the mutual to stock conversion and any material changes subsequent to the "as of" date.

#### Board of Directors.

6. Within sixty (60) days of the effective date of this Agreement, the Institution shall submit to the Deputy Regional Director for prior written approval a plan for expanding its Board of Directors ("Board Expansion Plan"). It is currently intended that such expansion shall occur in connection with the conversion of the Institution from mutual to stock charter. If expansion of the Institution's Board of Directors has not otherwise occurred on or before January 1, 1993, the Board Expansion Plan shall require that:

- (a) The institution increase the total number of directors to a minimum of seven with a majority of outside directors;
- (b) Each of the new directors shall be an independent person who has experience in the financial services or other related industries, or shall have qualifications otherwise acceptable to the OTS;
- (c) The names and backgrounds of the individuals proposed as new directors of the Institution shall be submitted to the Deputy Regional Director or his/her designee for approval, and such individuals may not be appointed or elected to the Board of Directors unless they have first been approved by the Deputy Regional Director or his/her designee; and

- (d) It is recognized that acceptance of directorship is a voluntary, individual decision and the Institution makes no representation that it has the power to obtain new directors. Once the Board Expansion Plan has been approved by the Deputy Regional Director, the Institution shall fully cooperate, use its best efforts, and maintain documents to that effect, in implementing, complying with and adhering in all respects to, the Board Expansion Plan.
- (e) As used in Section 6 of this Agreement, the term "independent" shall mean a person not employed by the Institution, its subsidiaries, or its affiliated persons and who is otherwise free of any relationship that would interfere with the exercise of independent judgment.

#### Reporting Requirements.

7. A certified copy of the minutes of each meeting of the Institution's Board of Directors and each committee thereof, all attachments to such minutes, and all written materials, schedules and information provided to the Board for its review in connection with such meetings ("Board Package"), shall be furnished to the Deputy Regional Director after such minutes are approved. The minutes and Board Package shall in all cases be submitted to the Deputy Regional Director by the end of the month following the month in which the meeting(s) are held, with or without Board approval of the minutes. If Board approval is not obtained for the minutes submitted, a written explanation for this omission must accompany the submission.

8. The Institution shall submit reports on variances from the business plans on a quarterly basis in the format provided by the Deputy Regional Director comparing actual vs. projected results. These quarterly variance reports will be due by the end of the month following each quarter end.

9. The Institution shall submit a quarterly analysis of the Institution's interest rate risk exposure which conforms to the requirements of OTS Thrift Bulletin 13.

10. The Institution's Board of Directors shall ensure full compliance with the provisions of this Agreement and shall monitor and review such compliance on a quarterly basis at Board of Directors meetings. Within 30 days after the end of each calendar quarter, the Board of Directors shall submit to the Deputy Regional Director or his/her designee a written certification of the Institution's compliance with this Agreement.

#### Other Provisions.

11. Although the Board is, by this Agreement, required to submit certain proposed actions and programs for the review or approval of the Deputy Regional Director or his/her designee, the Board has the ultimate responsibility for proper and sound management of the Institution. In exercising and fulfilling its fiduciary duties, the Board may consider the reports of management, counsel, and other agents and consultants of the Board. Nothing contained herein shall require the Board or any member or agent thereof to take any action or omit to take any action inconsistent with his or her fiduciary duties.

12. It is expressly and clearly understood that if, at any time, the OTS deems it appropriate in fulfilling the lawful responsibilities placed upon it by the several laws of the United States of America to undertake any lawful action affecting the Institution, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the OTS from doing so.

13. Any time limitations imposed by this Agreement shall begin to run from the Effective Date of this Agreement, unless otherwise provided in this agreement. Such time limitations may be extended by the Deputy Regional Director or his/her designee for good cause upon written application by the Board.

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 the rules and regulations adopted by the OTS (including, without limitation, Chapter V of Title 12 Code of Federal Regulations). Any such technical words or terms used in this Agreement and undefined in said rules and regulations shall have meanings that accord with the best custom and usage in the thrift industry.

15. 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.

16. It is understood that the execution of this Agreement shall not be construed as an approval of any application or notices that are contemplated by the Institution.

17. Any report or other document required by this Agreement to be submitted to the OTS shall be filed with the Office of Thrift Supervision, P.O. Box 6139, Indianapolis, In 46206, Attn.: Assistant Director. All reports and other documents shall be deemed filed when received by the OTS.

18. In the event any provision of this Agreement shall be declared invalid, illegal, or unenforceable; the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. The section headings used in this Agreement are for convenience of reference only and are not to affect the construction of or be taken into consideration in the interpretation of this Agreement.

20. This Agreement shall remain in effect until terminated, modified, or suspended by the OTS, acting through the Regional Director or his/her designee.

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: 15/  
Ronald N. Karr  
Central Regional Director

**MUTUAL SAVINGS BANK, FSB  
BAY CITY, MICHIGAN**

By: 15/  
Wendell L. Evans, Jr.  
Director

By: 15/  
Charles E. McCuiston  
Director

By: 15/  
Jean M. Hyde  
Director

By: 15/  
Bernard D. Williams  
Director

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EXHIBIT A

CERTIFICATION

I, \_\_\_\_\_, hereby certify that:

1. I am the Chief Financial Officer of Mutual Savings Bank, FSB (the "Institution");
2. As a result of the conversion of the Institution from mutual to stock form consummated this date (the "Conversion"), after taking into account the receipt by the Institution of the proceeds of the Conversion, less expenses associated therewith, the adjusted total assets of the Institution (as defined in 12 C.F.R. Part 567) on this date will be \$\_\_\_\_\_, and its core capital (as so defined) on this date will be \$\_\_\_\_\_, so that the ratio of its core capital to adjusted total assets exceeds 4%.
3. Also as a result of the Conversion, on this date the Institution will have tangible capital greater than or equal to 3% of tangible assets, core capital greater than or equal to 3% of adjusted tangible assets, and risk-based capital greater than or equal to 8% of risk weighted assets, calculated excluding any assets which would not be includable in calculating capital under 12 C.F.R. Part 567 as of January 1, 1995.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chief Financial Officer

EXHIBIT B  
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(Letterhead of Deloitte & Touche)  
 [1], 1992

Board of Directors  
 Mutual Savings Bank, F.S.B.  
 623 Washington Avenue  
 Bay City, Michigan 48708

Ladies and Gentlemen:

At your request, we have performed the procedures described below with respect to the Schedule of Regulatory Capital Position dated [1], 1992 (Attachment A hereto) provided to us by Mutual Savings Bank, F.S.B. ("Mutual"). These procedures, which were agreed to by Mutual and the Office of Thrift Supervision ("OTS"), were performed solely to assist you in complying with Section 5 of the Supervisory Agreement dated [2], 1992 between Mutual and the OTS. It is understood that this report is solely for your information and is not to be referred to or distributed for any purpose to anyone who is not a director or member of management of Mutual, except that a copy hereof may be provided to the OTS. The procedures we performed and the results of such procedures are summarized as follows:

1. We read the Supervisory Agreement dated [1], 1992.
2. We read the OTS capital requirements for savings institutions specified in 12 C.F.R. Part 567.
3. We read the Certification (in the form of Exhibit A to the Supervisory Agreement) dated [1], 1992 prepared by Mutual's Chief Financial Officer ("CFO").
4. We obtained the Schedule of Regulatory Capital Position dated [1], 1992 as prepared by Mutual's CFO.
5. We compared the amount shown on the Schedule of Regulatory Capital Position and termed "Retained earnings as of [1], 1992" to the amount of retained earnings shown in the general ledger as of [1], 1992 and found them to be in agreement.

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- 1/ Date of Pricing.
- 2/ Date of Supervisory Agreement.
- 3/ Month ending date not more than 2 months prior to Date of Closing.

DC-46503.1

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 [ ], 1992  
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6. We compared the amount shown on the Schedule of Regulatory Capital Position and termed "Conversion Proceeds" to the amount shown in [document obtained from underwriters indicating the Actual Purchase Price and the number of shares to be sold at the Actual Purchase Price, as determined at the Pricing Meeting] and found them to be in agreement.

7. We compared the amount shown on the Schedule of Regulatory Capital Position and termed "Conversion Expenses" to the amount shown in [document obtained from Mutual updating to the Date of Pricing the Schedule at Item 7 of Form AC filed with the OTS on April 8, 1992] and found them to be in agreement.

8. We compared the amount shown on the Schedule of Regulatory Capital Position and termed "Goodwill" to the amount of goodwill shown in the general ledger as of [ ], 1992 and found them to be in agreement.

9. We proved the arithmetic accuracy of amounts shown in the Schedule of Regulatory Capital Position and termed "Total tangible capital," "Total core capital" and "Total capital."

10. We obtained the Schedule of Adjusted Total Assets and Risk-weighted Assets dated [ ], 1992 as prepared by Mutual's CFO (Attachment B) hereto.

11. We compared the amount shown on the Schedule of Adjusted Total Assets and Risk-weighted Assets and termed "Total assets as of [ ], 1992" to the amount of total assets shown in the general ledger as of [ ], 1992 and found them to be in agreement.

12. We compared the amounts shown on the Schedule of Adjusted Total Assets and Risk-weighted Assets and termed "Goodwill" and "Deferred loss on financial futures" to amounts shown in the Schedule of Regulatory Capital Position and similarly termed and found them to be in agreement.

13. We proved the arithmetic accuracy of the amount shown in the Schedule of Adjusted Total Assets and Risk-weighted Assets and termed "Adjusted Total Assets."

14. We divided the amount shown in the Schedule of Regulatory Capital Position as "General valuation allowances" by the amount of risk-weighted assets shown in the Schedule of Adjusted Total Assets and Risk-weighted Assets and found the result to be less than or equal to 1.25%.

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[ ], 1992  
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15. We summed the amounts shown in the Schedule of Regulatory Capital Position and termed "General valuation allowances" and "Net worth certificates" and found the result to be less than the amount shown in the Schedule and termed "Total core capital."

16. We compared the amounts shown in the Schedule as "Required Capital %" (column D) to Section 5(c) of the Supervisory Agreement and found them to be in agreement.

17. We proved the arithmetic accuracy of amounts shown on the Schedule in columns B, C, D, E and F.

Because of the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the Schedule of Regulatory Capital Position of Mutual. In connection with the procedures referred to above, no matters came to our attention that caused us to believe that the Schedule of Regulatory Capital Position might require adjustment. Had we performed additional procedures or had we conducted an audit of the financial statements in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report related only to the Schedule of Regulatory Capital Position as specified above and does not extend to any financial statements of Mutual, taken as a whole.

DELOITTE & TOUCHE

By \_\_\_\_\_

Attachment A

EXHIBIT B  
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SCHEDULE OF REGULATORY CAPITAL POSITION  
[<sup>1/</sup> ], 1992

The table below presents Mutual's capital position as of [<sup>1/</sup> ], 1992 calculated in accordance with Section 5 of the Supervisory Agreement dated [<sup>2/</sup> ], 1992.

|                                                 | (A)<br>Actual<br>.....Capital.....<br>Amount | (B)<br>% | (C)<br>Required<br>.....Capital.....<br>Amount | (D)<br>% | (E)<br>Excess<br>.....Capital.....<br>Amount | (F)<br>% |
|-------------------------------------------------|----------------------------------------------|----------|------------------------------------------------|----------|----------------------------------------------|----------|
| Retained Earnings as of [ <sup>2/</sup> ], 1992 | \$                                           |          |                                                |          |                                              |          |
| Conversion Proceeds                             |                                              |          |                                                |          |                                              |          |
| Conversion Expenses                             |                                              |          |                                                |          |                                              |          |
| Material Changes (a)                            |                                              |          |                                                |          |                                              |          |
| Goodwill                                        |                                              |          |                                                |          |                                              |          |
| Deferred loss on financial futures              |                                              |          |                                                |          |                                              |          |
| TOTAL TANGIBLE CAPITAL                          |                                              | %        | \$                                             | %        | \$                                           | %        |
| TOTAL CORE CAPITAL                              |                                              | %        | \$                                             | %        | \$                                           | %        |
| General valuation allowances                    |                                              |          |                                                |          |                                              |          |
| Net worth certificates                          |                                              |          |                                                |          |                                              |          |
| TOTAL CAPITAL                                   | \$                                           | %        | \$                                             | %        | \$                                           | %        |

(a) The following "material changes" as used in Section 5(d) of the Supervisory Agreement occurred between [<sup>1/</sup> ] and [<sup>1/</sup> ]:

| Description | Amount |
|-------------|--------|
|             | \$     |
|             |        |
|             |        |
| Total       | \$     |

- 1/ Date of Pricing.
- 2/ Date of Supervisory Agreement.
- 3/ Month ending date not more than 2 months prior to Date of Closing.

DC-46589.1

Attachment B

EXHIBIT B  
PAGE 5 OF 5MUTUAL SAVINGS BANK, F.S.B.  
SCHEDULE OF ADJUSTED TOTAL ASSETS AND RISK-WEIGHTED ASSETS  
[<sup>1/</sup> ], 1992

The table below presents the computation of Mutual's adjusted total assets as of [<sup>1/</sup> ], 1992.

|                                                    |          |
|----------------------------------------------------|----------|
| Total assets as of [ <sup>1/</sup> ], 1992         | \$ _____ |
| Goodwill                                           | _____    |
| Deferred loss on financial futures                 | _____    |
| ADJUSTED TOTAL ASSETS                              | \$ _____ |
| RISK-WEIGHTED ASSETS AS OF [ <sup>2/</sup> ], 1992 | \$ _____ |

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<sup>1/</sup> Date of Pricing.

<sup>2/</sup> Month ending date not more than 2 months prior to Date of Closing.

DC-66590.1