

AGREEMENT

This Agreement (Agreement) is made and is effective this 24th day of February, 2003 (Effective Date), by and between **First Heights Bank, a FSB (Bank)** (OTS Docket No. 08526), a stock-chartered savings association, having its main office located in Houston, Texas, and the **Office of Thrift Supervision (OTS)**, an office within the United States Department of the Treasury, having its principal executive offices located at 1700 G Street, N.W., Washington, D.C., acting through its Midwest Regional Director or his/her designee (Regional Director).

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

WHEREAS, OTS finds that: (1) the Court of Federal Claims entered a summary judgment (Judgment) for Bank; Pulte Corporation, Bloomfield Hills, Michigan (Pulte) (now known as Pulte Homes, Inc.); and Pulte Diversified Companies, Inc., Bloomfield Hills, Michigan (PDCI) in First Heights Bank, a FSB et al. v. United States, 51 Fed. Cl. 659 (2001); (2) the parties have moved for a summary judgment on damages in First Heights Bank, a FSB et al. v. United States Case No. 96-811C (U.S. Court of Federal Claims) (Federal Claims Court Litigation) and the Court of Federal Claims is expected to rule on these motions in 2003; and (3) the Bank has complied with all regulatory directives and requests made by OTS to it since the date of the Judgment; and

WHEREAS, OTS is of the view that it is appropriate to formally recognize the measures previously taken by the Bank to ensure that the Bank will: (i) continue to comply with all applicable laws and regulations, and (ii) engage in safe and sound practices; and

WHEREAS, the Bank, acting through its Board of Directors (Board), wish to cooperate with OTS and to evidence its intent to: (i) continue to comply with all applicable laws and regulations, and (ii) engage in safe and sound practices. Further, this Agreement formally recognizes previous resolutions and commitments by the Bank.

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

COMPLIANCE WITH LAWS, REGULATIONS & SAFE AND SOUND PRACTICES

1. Compliance with Regulations

The Bank will continue to take all necessary and appropriate actions to confirm compliance with the following:

- (a) Section 562.4 of OTS Regulations, 12 C.F.R. § 562.4 (regarding audits);
- (b) Section 563.41 of the OTS Regulations, 12 C.F.R. § Section 563.41 (regarding loans and other transactions with affiliates and subsidiaries); and
- (c) Section 563.42 of the OTS Regulations, 12 C.F.R. § Section 563.42 (regarding additional standards applicable to transactions with affiliates and subsidiaries).

OPERATING RESTRICTIONS

2. Operations

(a) Without the prior written approval of the Regional Director, the Bank shall not make any material changes in its balance sheet at December 31, 2002, as reported on its December 31, 2002 Thrift Financial Report. For this purpose, a material change will include, but not be limited to, any change in the type of investments or liabilities on the Bank's books. A rollover of a current deposit that complies with the terms of this Agreement is not considered a material change for purposes of this Agreement.

(b) Without the prior written approval of the Regional Director, the Bank shall maintain substantially all of its assets in investments in investment grade mortgage-backed securities with an average term to maturity comparable to the maturity of the \$500,000 deposit received pursuant to Paragraph 4 of this Agreement.

3. Asset Growth

Pursuant to OTS Regulatory Bulletin 3b, dated November 26, 1996, without the prior written approval of the Regional Director, the Bank shall not increase its total assets during any quarter in excess of an amount equal to net interest credited on deposit liabilities at the end of each calendar quarter, except for accrued interest with respect to: (a) assets on the Bank's books as of the effective date of this Agreement or (b) other investment grade mortgage-backed securities subsequently acquired to replace such assets when they mature.

4. Deposits

Without the prior written approval of the Regional Director, the Bank shall not offer or issue any type of depository accounts, brokered or otherwise, that are insured by Federal Deposit Insurance Corporation (FDIC), except for a \$500,000 deposit from an affiliate as increased to include net interest credited, provided that the effective yield paid on the deposit is not greater than the market rates paid on deposits of comparable size and maturity and that the maturity of the deposit shall be no longer than one year.

5. Audits

Pursuant to 12 C.F.R. § 562.4(b), the Bank shall either: (i) obtain an independent audit of its year-end 2002 and subsequent year-end financial statements and submit copies of that audit report to the Regional Director or (ii) submit a written request for waiver of the audit requirement by the end of the first quarter after this and each subsequent calendar year, and receive non-objection to its request from the Regional Director.

6. **Changes in Directors or Executive Officers; Terms of Employment and Golden Parachute Payments**

- (a) As required by Section 32 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831i, and 12 C.F.R. § 563.550, *et seq.*, the Bank shall provide to OTS at least 30 days prior written notice of any changes to its directorate or executive officer staff before the employment becomes effective.
- (b) The Bank shall not enter into, renew, extend or revise any contractual arrangement related to compensation or benefits with any director or senior executive officer of the Bank, unless it first (i) provides a minimum of 30 days advance notice of a proposed transaction and (ii) receives a written notice of non-objection from the Regional Director, after submitting a copy of the contract for his review.
- (c) The Bank shall not make any "golden parachute payment", as that term is defined in Section 18(k) of the FDIA, 12 U.S.C. § 1828(k), and 12 C.F.R. Part 359, unless it first (i) provides a minimum of 30 days advance notice of a proposed transaction and (ii) receives a written notice of non-objection from the Regional Director and from the FDIC.
- (d) The Bank shall not increase the compensation of any senior executive officer or director of the Bank, unless it first (i) provides a minimum of 30 days advance notice of a proposed transaction and (ii) receives a written notice of non-objection from the Regional Director.
- (e) The Bank shall continue to retain a president.

7. **Transactions with Affiliates**

- (a) Without first providing a minimum of 30-days advance notice of the proposed payment, and receiving a written notice of non-objection from the Regional Director with regard thereto, the Bank shall not engage in any transaction with any affiliate, except for (i) transactions that comply with all applicable statutory and regulatory requirements of 12 C.F.R. §§ 563.41 and 563.42, and the consideration paid or received is less than \$200,000 per transaction, and (ii) the rollover of a \$500,000 deposit from an affiliate and any interest paid thereon in accordance with Paragraph 3 of the Agreement, and the subsequent repayment of such deposit.
- (b) Notwithstanding Paragraph 7(a) hereof, the Bank shall not pay any litigation-related fees and costs incurred by PDCI, Pulte, or the Bank in the Federal Claims Court Litigation or any other litigation.

8. **Capital Distributions**

The Bank shall not make any capital distribution, as that term is defined in 12 C.F.R. § 563.141, unless it first (i) provides a minimum of 30 days advance notice of a proposed capital distribution and (ii) receives a written notice of non-objection from the Regional Director.

9. **Third Party Contracts**

- (a) The Bank shall not enter into any third party contracts outside the normal course of business pursuant to Section 310 of the OTS Thrift Activities Handbook, unless it first (i) provides a minimum of ten days advance notice of a proposed transaction and (ii) receives a written notice of non-objection from the Regional Director.
- (b) The Bank shall notify OTS in writing of any contracts or arrangements with service providers or third parties for an authorized service, regardless whether such service is performed on or off its premises, as required by 12 U.S.C. § 1464(d)(7)(D)(ii). The Bank must submit such notice to the Regional Director no later than 30 days following the earlier of the date the service provider becomes a party to a contract for such service (if there is a contract) or the date on which the performance of the service is initiated.

10. **Corporate Status**

- (a) The Bank shall not enter into any commitment or undertaking to merge, combine, or consolidate with another depository institution, non-depository institution, or entity; to sell its assets or transfer its liabilities to another depository institution, non-depository institution, or entity; or to be acquired by another entity, unless such commitment or undertaking is in accordance with a voluntary dissolution plan approved by OTS pursuant to 12 C.F.R. § 546.4.
- (b) The Bank shall not undertake to convert its federal charter to another state or federal charter.
- (c) The Bank shall maintain FDIC insurance of accounts.
- (d) The Bank shall file a voluntary dissolution plan with OTS by no later than 30 days after final resolution of the Federal Claims Court Litigation or January 3, 2005, whichever occurs first.
- (e) The Bank shall file a written report on the status of the Court of Federal Claims Litigation by the 15th day following each quarter during which the litigation is pending.

MISCELLANEOUS

11. Director Responsibility

Notwithstanding the requirements of this Agreement that the Board submits various matters to the Regional Director to receive his/her approval, non-objection, or notice of acceptability, such regulatory oversight does not derogate or supplant each individual member's continuing fiduciary duty. The Board shall have the ultimate responsibility for overseeing the Bank's safe and sound operation at all times, including compliance with the determinations of the Regional Director or his/her designee as required by this Agreement.

12. Compliance with Agreement

The Board and officers of the Bank shall take all actions necessary or appropriate to cause the Bank to comply with, and to carry out the provisions of this Agreement.

13. Definitions

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; Home Owners' Loan Act, 12 U.S.C. §§ 1461 et seq. (HOLA); Federal Deposit Insurance Act, 12 U.S.C. §§ 1811 et seq. (FDIA); or OTS Memoranda. Any such technical words or terms used in this Directive and undefined in the Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

14. Successor Statutes, Regulations, Guidance, Amendments

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 and references to successor provisions as they become applicable.

15. Notices

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 OTS or the Bank shall be in writing and mailed, first class or overnight courier, or means of electronic transmission, or physically delivered, and addressed as follows:

OTS: Midwest Regional Office
225 East John Carpenter Freeway
Suite 500
Irving, TX 75062-2326
972/227-9500 - Main Number
972/277-9501 - Main Facsimile

Bank: First Heights Bank, a FSB
2010 North Loop West, Suite 220
Houston, TX 77018
713/686-1255 - Main Number
713/686-3918 - Main Facsimile

16. Duration, Termination, or Suspension of Agreement

- (a) This Agreement shall: (i) become effective upon OTS's execution, through its authorized representative whose signature appears below; and (ii) remain in effect until terminated, modified or suspended in writing by OTS, acting through its Director or the Regional Director (including any authorized designee thereof).
- (b) The Regional Director in his/her sole discretion may suspend, by written notice, any or all provisions of this Agreement.

17. Effect of Headings

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

18. 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, unless the Regional Director in his/her sole discretion determines otherwise.

19. No Violations of Law, Rule, Regulation, or Policy Statement Authorized; OTS Not Restricted

Nothing in this Agreement shall be construed as: (i) allowing the Bank to violate any law, rule, regulation, or policy statement to which it is subject; or (ii) restricting OTS from taking such action(s) that are appropriate in fulfilling the responsibilities placed upon it by law, including, without limitation, any type of supervisory, enforcement, or resolution action that OTS determines to be appropriate.

20. 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 and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim under this Agreement.

21. Signature of Directors

Each Director signing this 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 Bank's execution of this Agreement.

22. Integration Clause: Impact on Other Enforcement Documents

- (a) The March 12, 1998 and March 16, 1999 Directives, issued by the Regional Director to the Bank, remain in full force and effect and are hereby integrated into the terms of this Agreement, except to the extent that these Directives are inconsistent with the provisions of this Agreement.
- (b) The May 18, 2002 Agreement between First Heights and OTS, as modified by OTS's March 27, 2002 letter, is hereby terminated upon the execution of this Agreement.

23. Enforceability of Agreement

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

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

OFFICE OF THRIFT SUPERVISION

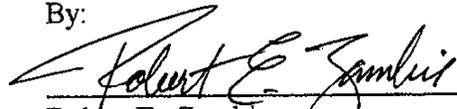
By:



Frederick R. Casteel
Midwest Regional Director

FIRST HEIGHTS BANK, a FSB

By:



Robert E. Zambie
President and Director

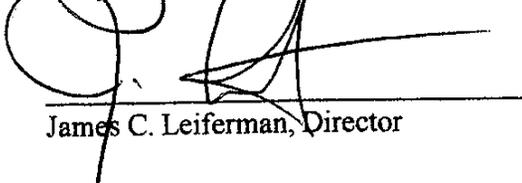
DIRECTORS OF FIRST HEIGHTS BANK, a FSB



Harry D. Blanton, Director



Calvin R. Boyd, Director



James C. Leiferman, Director

Peter C. Staaf, Director

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

OFFICE OF THRIFT SUPERVISION

FIRST HEIGHTS BANK, a FSB

By:

By:

Frederick R. Casteel
Midwest Regional Director

Robert E. Zambie
President and Director

DIRECTORS OF FIRST HEIGHTS BANK, a FSB

Barry D. Blanton, Director

Calvin R. Boyd, Director

James C. Leiferman, Director

Peter C. Staaf

Peter C. Staaf, Director

**CERTIFIED COPY OF
RESOLUTION OF BOARD OF DIRECTORS**

I, the undersigned, being the duly appointed and qualified Secretary of First Heights Bank, a FSB, Houston, Texas (Bank), hereby certify as follows:

1. A duly called meeting of the Board of Directors of the Bank was held on February 24, 2003;
2. At the meeting, a quorum was present and voting throughout;
3. The following is a true copy of resolutions duly adopted by the Bank's Board of Directors, which resolutions have not been rescinded or modified and are now in full force and effect:

WHEREAS, the Bank's Board of Directors wishes to continue to cooperate with OTS, and to demonstrate that the Board and the Bank intend to continue to: (1) comply with all applicable laws and regulations; and (2) engage in safe and sound practices; and

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

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

NOW THEREFORE, BE IT RESOLVED, that the Bank 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 Bank 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 Bank 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 Peter C. Staaf) and all members of the Board of Directors (except Peter C. Staaf) voted in favor of the resolution;

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of the Bank on this 4th day of March, 2003.

Shirley A. Glueck

Name: Shirley A. Glueck
Title: Vice President/Corporate Secretary

(SEAL)