

UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY

In the Matter of

ROBERT M. WURZELBACHER, JR.

Former Director of American Continental  
Corporation, the Savings and Loan  
Holding Company of Lincoln Savings  
and Loan Association,  
Irvine, California

OTS Order No. AP 92-70

Dated: July 17, 1992

TEMPORARY ORDER TO CEASE AND DESIST

The Office of Thrift Supervision of the United States Department of the Treasury ("OTS") issued a Notice of Charges and Hearing to Direct Restitution and Notice of Intention to Remove and Prohibit Respondents from Participation in the Affairs of Federally-Insured Depository Institutions against, among others, Robert M. Wurzelbacher, Jr., ("Wurzelbacher" or "Respondent") on August 9, 1990 and as amended on January 29, 1991 (the "Amended Notice") pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"), 12 U.S.C. §§ 1818(b) and 1818(e).

Upon review of the Amended Notice, the information detailing criminal charges against Wurzelbacher in No. Cr. 91-1021(A)-MRP (C.D. Ca.), and Wurzelbacher's Plea Agreement to that information, filed May 15, 1992, the OTS has determined that there is substantial evidence to support the charges that Wurzelbacher was

unjustly enriched through violations of law or regulations or unsafe or unsound practices relating to the Hotel Pontchartrain Limited Partnership specified in the Amended Notice and that Lincoln Savings and Loan Association of Irvine, California ("Lincoln") was injured as a result of these violations and practices. The condition of Lincoln is likely to be weakened and the interests of Lincoln, the depositors and the Deposit Insurance Fund (the "Fund") are likely to be prejudiced if Wurzelbacher is allowed to dissipate his assets prior to the completion of the proceedings conducted pursuant to FDIA Section 8(b) and 8(e), as amended, 12 U.S.C. §§ 1818(b) and 1818(e).

#### I. BACKGROUND

1. The purpose of this Temporary Order to Cease and Desist ("Temporary Order") is to prevent the weakening of the position of Lincoln, its depositors, or the Fund and to prevent the further dissipation of assets rightfully belonging to them prior to the completion of the proceedings conducted pursuant to FDIA Section 8(b) and 8(e), as amended, 12 U.S.C. §§ 1818(b) and 1818(e).

2. The Amended Notice seeks, among other relief, \$24,186,000 in restitution representing the loss incurred by Lincoln as a result of Wurzelbacher's and others' unlawful conduct in connection with the granting of a \$20 million line-of-credit by a wholly-owned subsidiary of Lincoln to the Hotel Pontchartrain Limited Partnership ("HPLP"). HPLP was a "tax shelter" in which Wurzelbacher was a limited partner. Lincoln's records do not show any loan underwriting or financial analysis prior to granting the

line-of-credit. It was unsecured, did not require repayment of principal and interest for five years, and its interest rate was submarket. The line-of-credit was granted to support the continuing losses of the partnership's asset, the Hotel Pontchartrain in Detroit, Michigan. The transaction was an affiliated transaction and involved prohibited self-dealing, as well as constituted an unsafe or unsound banking transaction and breach of fiduciary duty by Wurzelbacher and others. In January, 1990 the Hotel Pontchartrain was taken over by another savings association in foreclosure proceedings. HPLP had drawn \$19,473,000 on its line-of-credit, which has not been repaid and has accrued interest of \$4,713,000. Hence, Lincoln has lost \$24,186,000 for granting of the line-of-credit to HPLP. This transaction constitutes an unsafe and unsound practice and a reckless disregard for the law by Wurzelbacher.

3. The Amended Notice and record are the product of extensive examinations of Lincoln. Lincoln, under the direction of Wurzelbacher and others, frequently sought to frustrate these examination efforts.

4. An evidentiary hearing in the administrative proceeding was held before Administrative Law Judge Paul J. Clerman ("ALJ") concerning the OTS charges against Wurzelbacher and others in two parts: the first part of the hearing was held in Los Angeles, California, from July 1-3 and July 8-12, 1991; and the second part was held in Phoenix, Arizona, from April 27 through May 1, 1992. The evidentiary hearing pertained to the charges alleged in

connection with the Hotel Pontchartrain and one of the other transactions alleged in the Amended Notice, the ESOP transaction. The other charges set forth in the Amended Notice were severed from those charges presented at the evidentiary hearing pursuant to an order issued by the ALJ on March 24, 1992, due to the pending Federal criminal charges based upon those same transactions.

5. On May 15, 1992, Wurzelbacher pled guilty to three felony counts of misapplication of federally insured funds. By his guilty plea, he admitted that he and other officers and employees of ACC and Lincoln willfully misapplied over \$13 million dollars of Lincoln's money, funds and credits in connection with the Hotel Pontchartrain transaction, although he and others knew that the transaction was not in the best interest of Lincoln and that, in all likelihood, Lincoln would not be repaid.

6. The Amended Notice and the facts described herein demonstrate that Wurzelbacher has personally enriched himself at the expense of Lincoln and ultimately the United States. Wurzelbacher has shown a willingness to violate law and regulation and his fiduciary duty of loyalty and care in order to enrich himself while causing Lincoln to fail.

7. Lincoln and its depositors were the victim of a severe case of insider abuse and OTS concludes that danger exists for further dissipation of assets in this case. Because the abuses cited in the Amended Notice constitute a continuing injury, the appropriate and necessary means to prevent further injury to Lincoln and the interest of depositors is through this Temporary

Order as authorized under relevant statutory provisions. See 12 U.S.C. § 1818(b)(6)(B) and (c)(1). The Temporary Order is framed to correct the conditions resulting from the violations and practices found in the Amended Notice, as well as to prevent further injury.

8. OTS has learned that Wurzelbacher intends to sell a parcel of real estate in Leland, Michigan on July 20, 1992 and transfer a portion of the proceeds, possibly as much as \$300,000, to other members of his family.

9. These events, as well as other information known to OTS, when viewed in light of the substantial charges contained in the Amended Notice, create a reasonable possibility that Wurzelbacher may dissipate assets prior to the conclusion of the proceedings to be conducted pursuant to FDIA Section 8(b), as amended, 12 U.S.C. § 1818(b).

## II. CEASE AND DESIST ORDER

THEREFORE, by the authority under FDIA Section 8(c), as amended, 12 U.S.C. § 1818(b)(6), (b)(7), and (c)(1) it is hereby ordered that:

### 1. Posting of Security.

(a) Within 24 hours of the service of this Temporary Order, Wurzelbacher shall provide adequate security in an amount aggregating \$300,000. This sum is a portion of the amount of restitution and reimbursement (exclusive of interest) sought by the OTS as a result of the violations of laws and regulations and unsafe or unsound practices engaged in by Wurzelbacher, as alleged

in the Notice.

(b) Wurzelbacher shall comply with the security requirements of this paragraph by one or a combination of any of the following means:

- (1) by paying cash (or its equivalent) in the required amount to the undersigned Director (the "Director");
- (2) by establishing and maintaining an escrow account in the required amount for the benefit of the RTC, as receiver of Lincoln, at an FDIC-insured depository institution and with an escrow agent deemed acceptable (in writing) by the Director;
- (3) by providing an irrevocable letter of credit or bond in the required amount in favor of the RTC, as receiver of Lincoln, from an FDIC-insured depository institution or an insurer approved by the Director, and subject to terms and conditions as approved by the Director; or
- (4) in the event Wurzelbacher contends that his assets are inadequate to permit him to comply with the security requirements of this paragraph, by providing OTS with a mortgage (or similar) lien on the property located at 396 North Terrace Court, Leland, MI 49654 and any proceeds therefrom (the "collateral"). Wurzelbacher shall provide the required lien by executing and delivering documents

in the form and substance satisfactory to the OTS, in its sole discretion, thereby giving the OTS a valid, effective and enforceable lien on the collateral, subject only to such liens, pledges, security interests, encumbrances or charges existing as of the date of this Temporary Order.

2. Required Disclosures.

(a) No later than 12:00 (noon) Eastern Standard Time on the third day following service of this Temporary Order, Wurzelbacher shall submit to the Director (as provided by paragraph II(5) hereof):

- (1) true and complete copies of signed United States and state income tax returns for 1988, 1989, 1990 and 1991 if prepared (collectively the "Tax Returns"), including all schedules and attachments thereto, or signed authorizations permitting the OTS to obtain the Tax Returns from the appropriate federal and state agencies; and
- (2) a written statement, signed under penalty of perjury, identifying with specificity all accounts or other assets currently located outside of the continental United States in which he or any member of his immediate family has any legal or beneficial interest; and
- (3) a written statement, signed under penalty of perjury, describing all judgments and legal

proceedings pending against Wurzelbacher and his immediate family.

(b) No later than 5:00 p.m. Eastern Standard Time on the fifth day following service of this Temporary Order, Wurzelbacher shall submit to the Director:

- (1) a written statement, signed under penalty of perjury, identifying each occasion since July 5, 1986, in which he or any member of his immediate family has transferred funds or otherwise removed assets from the United States.
- (2) a financial statement, signed with a certification under penalty of perjury that the information is true and accurate to the best of his information and belief after diligent inquiry, showing assets and liabilities as of June 30, 1992 in which he, his immediate family members, partnerships and corporations (or other entities) owned or controlled by them, directly or indirectly, have a legal or beneficial interest (collectively "Wurzelbacher Entities"), all judgments and legal proceedings pending against them and all encumbrances, liens or other secured interests in assets. If assets or liabilities shown on the financial statement are held through a corporation, partnership, trust, or other entity, then the financial statement shall disclose the name and

nature of the entity, as well as the percentage of the person's ownership interest in the entity, and shall have attached thereto all documents sufficient to show the nature of the entity and to identify all other persons having an interest therein. Similar updated financial statements shall be submitted to the OTS no later than 15 days following the close of each calendar quarter, i.e., 15 days after March 31, June 30, September 30, and December 31; and

(3) a written statement, signed under penalty of perjury, identifying with specificity all assets transferred directly or indirectly to any family member by Wurzelbacher, or his wife, including corporation, partnership or trusts for the benefit of that family member, from July 5, 1986 to the present; and

(c) Upon written request of Wurzelbacher, the financial information and tax returns submitted pursuant to this paragraph will not be made public to persons or entities other than employees and agents of governmental authorities.

3. Limitations on Asset Transfer

(a) Wurzelbacher shall cease and desist from, directly or indirectly, causing or permitting the sale, transfer, or encumbrance of funds or other assets having a value in excess of Five Thousand Dollars (\$5,000), including any real property, in

which he, his spouse or any member of his immediate family, has a legal or beneficial interest, whether directly or through any other person or entity, specifically including the property located at 396 North Terrace Court, Leland, MI 49654, except with prior written consent of the Director of OTS or as otherwise permitted by this Temporary Order.

(b) The restrictions set forth in the preceding subparagraph (a) do not prevent the disposition of funds or other assets used to pay ordinary and reasonable living expenses which have a value singly or through related transactions of less than Five Thousand Dollars (\$5,000). For proposed expenditures of \$5,000 or more, whether singly or through related transactions, Respondent shall submit a description of the proposed expenditure to the Director and shall make no such expenditure until the Director consents in writing.

(c) Wurzelbacher shall provide the Director of OTS with thirty (30) days written notice of any attempt by third parties to execute on a judgment, foreclose on a lien or otherwise obtain a transfer of any asset in which Respondent has an interest, actual or beneficial, when the value of the asset exceeds Five Thousand Dollars (\$5,000).

4. Opportunity for Administrative Relief.

If Wurzelbacher contends that compliance with this Temporary Order would cause undue hardship to him or his dependents, or cause him to be unable to hire legal counsel for the enforcement proceeding, he may make application to the Director of OTS requesting relief from this Temporary Order. Any such application shall be filed and served in the manner provided by paragraph II(5) hereof. Any such application shall not be deemed complete and appropriate for action by the Director of OTS until the application is supported by the following:

- (1) current, complete, and accurate financial statements (as of December 31, 1989, December 31, 1990, December 31, 1991, and the end of the most recent calendar quarter) signed by the applicant with a certification under penalty of perjury that the information therein is true and accurate to the best of his knowledge and belief following diligent inquiry;
- (2) true, accurate, and complete copies of signed Tax Returns (within the meaning of paragraph II(2) hereof, which means for the years specified therein) or a signed written authorization permitting the OTS to obtain the Tax Returns from the appropriate Federal and State agencies;
- (3) written statements accurately and completely describing arrangements, funds, or trusts established for the benefit of the payment of their legal or other fees or

other expenses, whether directly or indirectly, along with a written statement of fees or other expenses advanced but not exhausted; and

- (4) affidavits setting forth the hardship that Respondent believes would be caused and such other facts as thought to be pertinent.

5. Compliance Procedures; Notices

a. All notices and other submissions required or permitted to be made pursuant to this Temporary Order shall be made in writing.

b. A copy of each such notice or submission, and any responses thereto, shall be filed with the Office of Financial Institution Adjudication ("OFIA") for the purpose of maintaining a complete record of all documents submitted to the OTS with respect to the above-captioned adjudicatory proceeding. The address of OFIA is as follows:

Office of Financial Institution Adjudication  
1700 G Street, N.W.  
Washington, D.C. 20552  
Attention: \_\_\_\_\_

c. If any notices or other submissions are required or permitted to be submitted to the Director of OTS pursuant to this Temporary Order, then such notices or other submissions shall be sent to:

Director  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552  
Attention: Margaret Hill, Acting Secretary

d. Respondent shall serve a copy of all such notices and other submissions required or permitted by this Temporary Order on:

Bruce F. Rinaldi  
Deputy Chief Counsel  
Special Trial Division  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552  
Fax Number: (202) 906-7494

e. All notices and other submissions required or permitted to be made pursuant to this Temporary Order shall be deemed to be a filing in the above-captioned adjudicatory proceeding, and should contain the title and docket number of the proceeding. Except as may otherwise be ordered by the Director of OTS, matters submitted to the Director shall be acted upon by the Director or his designee.

6. Construction. The cease-and-desist provisions set forth in this Temporary Order shall be construed in their broadest and most inclusive senses with a view of their remedial purpose of protecting the financial interest of Lincoln (and its subrogee), the Fund, and the United States.

7. Definitions. All technical words or terms used in this Temporary Order, for which meanings are not specified or otherwise provided by the provisions of this Temporary Order, shall, insofar as applicable, have meaning as defined in the Code of Federal Regulations, Title 12, Chapter V; or as defined in FIRREA, the FDIA, or the Home Owners Loan Act of 1933 ("HOLA") and any such words or terms undefined in the foregoing shall have meanings that

accord with the best custom and usage in the savings association industry.

8. Date of Effectiveness. This Temporary Order shall be and is effective upon service to Respondent through his counsel of record, and shall remain effective and enforceable until: (a) the completion of the administrative enforcement proceedings initiated by the Amended Notice, incorporated herein by reference; or (b) until such time as the OTS shall dismiss the charges specified in such Amended Notice; or (c) if a final enforcement order is issued at the completion at the proceeding, until the effective date of such final order; or (d) until stayed or enjoined by a court of competent jurisdiction.

IT IS SO ORDERED on this 17<sup>th</sup> day of July, 1992.

OFFICE OF THRIFT SUPERVISION  
By:

/S/

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Timothy Ryan  
Director