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

| | |
|---|---|
| In the Matter of<br><br>CHARLES H. KEATING, JR.,<br>JUDY J. WISCHER,<br>ROBERT J. KIELTY,<br>CHARLES H. KEATING, III,<br>ROBERT J. HUBBARD, JR.,<br>ROBERT M. WURZELBACHER, JR.,<br>ANDRE A. NIEBLING,<br><br>Directors of American Continental Corporation, the Savings and Loan Holding Company of Lincoln Savings and Loan Association, Irvine, California | Re: Order No. 90-1464<br>Dated August 9, 1990<br><br>AP-OTS-91-4<br>January 29, 1991<br><br>Order No.: OTS AP 92-81<br>Dated: August 14, 1992 |

STIPULATION AND CONSENT TO ISSUANCE OF
ORDER TO CEASE AND DESIST AND RESTITUTION, AND
ORDER OF PROHIBITION
PROHIBITING PARTICIPATION IN THE CONDUCT OF THE AFFAIRS OF
FEDERALLY INSURED DEPOSITORY INSTITUTIONS

The Office of Thrift Supervision ("OTS"), by and through its Director, Timothy Ryan, and Robert J. Hubbard, Jr. ("RESPONDENT"), hereby stipulate and agree as follows:

CONSIDERATION

1. On August 9, 1990, pursuant to OTS Order No. 90-1462, OTS approved and issued Order No. 90-1464, 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, which was thereafter amended on January 29, 1991, pursuant to Order No. 91-4 ("NOTICE"). See Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818 (b) and (e) (Supp. I 1989), and

Sections 407(e) and (g) of the National Housing Act of 1934 ("NHA"), formerly codified at 12 U.S.C. §§ 1730(e) and (g).

2. Without admitting or denying the assertions in the NOTICE, RESPONDENT stipulates and agrees to the provisions, terms, and conditions set forth herein and in the accompanying Order to Cease and Desist, and Restitution and Order of Prohibition Prohibiting Participation in the Conduct of the Affairs of Federally Insured Depository Institutions, ("ORDER") in consideration of OTS' agreement to dismiss RESPONDENT from the administrative litigation commenced pursuant to the NOTICE and such other consideration set forth in paragraphs 20 and 21 of the ORDER.

JURISDICTION

3. Lincoln Savings and Loan Association ("Lincoln") is a "savings association" as defined by Section 2(4) of the HOLA, 12 U.S.C. § 1813(b) (Supp. I 1989), and is an "insured depository institution" as defined by Section 3(c) of the FDIA, 12 U.S.C. § 1813(c) (Supp. I 1989).

4. RESPONDENT, as a former officer of Lincoln and its subsidiaries, is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u) (Supp. I 1989).

5. Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q) (Supp. I 1989), OTS is the "appropriate Federal banking agency" with jurisdiction over Lincoln and the RESPONDENT as an institution-affiliated party participating in the conduct of the affairs of Lincoln. The Director of OTS has the authority to bring

administrative cease and desist and prohibition proceedings, against RESPONDENT, pursuant to Section 5(d)(1)(A) of the HOLA, 12 U.S.C. § 1464(d)(1)(A) (Supp. I 1989), and Section 8 of the FDIA, 12 U.S.C. § 1818 (Supp. I 1989), and RESPONDENT is subject to the authority of OTS to initiate and maintain such proceedings.

CONSENT

6. RESPONDENT consents to the issuance by OTS of the accompanying ORDER. Further, RESPONDENT agrees to comply with the terms, provisions, and conditions of the ORDER upon its issuance.

FINALITY

7. The ORDER is issued pursuant to Sections 8(b) and 8(e) of the FDIA, 12 U.S.C. §§ 1818(b) and (e) (Supp. I 1989). RESPONDENT enters into the STIPULATION and CONSENT with the express understanding that (i) the ORDER, unless otherwise stated, shall only become a final order, effective and fully enforceable by OTS, its successor(s), or an appropriate Federal banking agency pursuant to the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i) (Supp. I 1989) upon the date it is issued.

WAIVERS

8. RESPONDENT waives his right to the administrative hearings provided by Sections 8(b) and (e) of the FDIA, 12 U.S.C. §§ 1818(b) and (e) (Supp. I 1989) and waives any right to claim that the ORDER does not comply with all applicable requirements of law. Further, RESPONDENT agrees not to challenge the validity of this Stipulation and Consent to Issuance of Order to Cease and Desist and Restitution, and Order of Prohibition Prohibiting Participation in

the Conduct of the Affairs of Federally Insured Depository Institutions ("STIPULATION and CONSENT") or the ORDER. Additionally, RESPONDENT waives his right to seek judicial review of this STIPULATION and CONSENT or the ORDER, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h) (Supp. I 1989).

COOPERATION

9. RESPONDENT agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, he will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to the NOTICE and any continuing litigation or proceeding brought by the OTS as a result of its investigation relating to Lincoln and its institution affiliated parties except that RESPONDENT does not waive his privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If RESPONDENT invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS may inquire or the production of any document requested by the OTS and OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., RESPONDENT, agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding on the matter for which immunity is given.

MISCELLANEOUS

10. RESPONDENT agrees that he is entering into this

STIPULATION and CONSENT and the ORDER for the purposes of resolving the charges set forth in the NOTICE as they pertain to the RESPONDENT only, and, except as provided in paragraph 20 of the ORDER, the STIPULATION and CONSENT and the ORDER do not resolve, affect or preclude any other administrative, civil or criminal claim or proceeding which may be brought against RESPONDENT or any other person named in the NOTICE by OTS or any other governmental entity.

11. RESPONDENT enters into this STIPULATION and CONSENT voluntarily and represents that no threats, offers, promises or inducements of any kind have been made by the OTS or any member, officer, employee, agent, or representative of the OTS to induce him to enter into this STIPULATION and CONSENT.

12. The RESPONDENT agrees by entering into this STIPULATION and CONSENT to the severance by the OTS of the claims against the RESPONDENT in this proceeding from the claims asserted against any other respondent named in the NOTICE.

13. RESPONDENT agrees that this STIPULATION and CONSENT shall be incorporated into the ORDER with the same force and effect as if fully set forth therein.

WHEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the OFFICE OF THRIFT SUPERVISION, by and through its Director, Timothy Ryan, and RESPONDENT intentionally

and knowingly execute this STIPULATION and CONSENT.

Approved as to form
and content:

/S/

RESPONDENT

Signed this 26 day of June 1992

/S/

RESPONDENT'S SPOUSE

Signed this 26 day of June 1992

OFFICE OF THRIFT SUPERVISION

/S/

BY: Timothy Ryan, Director

Signed this 14th day of July 1992

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

| | |
|---|---|
| In the Matter of<br><br>CHARLES H. KEATING, JR.,<br>JUDY J. WISCHER,<br>ROBERT J. KIELTY,<br>CHARLES H. KEATING, III,<br>ROBERT J. HUBBARD, JR.,<br>ROBERT M. WURZELBACHER, JR.,<br>ANDRE A. NIEBLING,<br><br>Directors of American Continental Corporation, the Savings and Loan Holding Company of Lincoln Savings and Loan Association, Irvine, California | Re: Order No. 90-1464<br>Dated August 9, 1990<br><br>AP-OTS-91-4<br>January 29, 1991<br><br>Order No.: OTS AP 92-81<br>Dated: August 14, 1992 |

ORDER TO CEASE AND DESIST AND RESTITUTION, AND ORDER OF PROHIBITION PROHIBITING PARTICIPATION IN THE CONDUCT OF THE AFFAIRS OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS

**WHEREAS**, on August 9, 1990, pursuant to OTS Order No. 90-1462, the OTS approved and issued Order No. 90-1464, 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, which was thereafter amended on January 29, 1991, pursuant to OTS Order No. 91-4 ("NOTICE");

**WHEREAS**, Robert J. Hubbard, Jr. ("RESPONDENT"), who is a named Respondent in the NOTICE, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist and Restitution, and Order of Prohibition Prohibiting Participation in the Conduct of the Affairs of Federally Insured Depository Institutions ("STIPULATION and

CONSENT"), which is accepted and approved by the Office of Thrift Supervision ("OTS") acting by and through its Director, Timothy Ryan; (the "Director"); and

**WHEREAS**, RESPONDENT in the STIPULATION and CONSENT has agreed and consented to the issuance of this Order to Cease and Desist and Restitution, and Order of Prohibition Prohibiting Participation in the Conduct of the Affairs of Federally Insured Depository Institutions ("ORDER"), pursuant to Sections 8(b) and (e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(b) and (e) (Supp. I 1989);

**WHEREAS**, RESPONDENT neither admits nor denies the allegations, assertions, facts, unsafe and unsound practices, and violations of law, rule, and regulation set forth in the NOTICE as such pertain and apply to RESPONDENT;

NOW, THEREFORE, IT IS ORDERED that:

1. The STIPULATION and CONSENT, attached hereto, is made a part hereof and is incorporated herein by reference.

CEASE AND DESIST

2. RESPONDENT shall cease and desist from:

a. Committing, committing in the future, or aiding and abetting the commitment of, unsafe and unsound practices and violations of laws, rules and regulations set forth in the NOTICE; and

b. Committing, committing in the future, or aiding and abetting the commitment of, any unsafe and unsound practices or any violation of any law, regulation, rule or condition imposed in

writing by a Federal regulatory banking agency in connection with the conduct of the business of any federally insured financial institution set forth in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("insured institution").

3. For a period of seven (7) years following the execution of the ORDER, the RESPONDENT and any entity (including any company as defined in 12 CFR § 583.6) in which the RESPONDENT, either alone or with members of his immediate family, as that term is defined in 12 CFR § 561.24, directly or indirectly, (a) owns or controls 10% or more of the entity or any class of equity securities of the entity, or (b) has a 10% or more beneficial interest, shall cease and desist from engaging and engaging in the future, either directly or indirectly, in any loan, extension of credit, guarantee or any other financial transaction whatsoever with any insured institution. Notwithstanding the foregoing limitation, RESPONDENT may engage in any of the following activities with respect to an insured institution on terms no more favorable to the RESPONDENT than the terms upon which comparable activities would be undertaken by the insured institution with other members of the public:

a. obtaining or maintaining savings accounts, checking accounts, Individual Retirement Accounts, Certificates of Deposit, or purchasing cashier's checks, money orders, or other similar instruments;

b. obtaining or maintaining home mortgages secured by a principal or secondary residence provided that the total amount of the mortgage or mortgages on each such residence does not exceed

the maximum amount of a conforming FNMA first mortgage loan;

c. obtaining or maintaining consumer loans, loans in the form of overdraft protection for NOW accounts, and extensions of consumer credit in connection with credit cards all of which in the aggregate do not exceed $100,000;

d. obtaining or maintaining loans for the payment of educational expenses actually incurred by the RESPONDENT for tuition and other costs directly related to the education of the RESPONDENT, his or her spouse and his or her children;

e. obtaining or maintaining loans for improving, altering, repairing, equipping, or furnishing the principal residence or secondary residence of the RESPONDENT, which are secured by such residence and in the aggregate do not exceed $200,000;

f. obtaining any other loans or extensions of credit which in the aggregate do not exceed $400,000, provided that such loans or extensions of credit are secured by collateral with an appraised value of at least 125% of the amount of the loans or extensions of credit as determined in writing by a qualified independent appraiser; and

g. refinancing any existing mortgage at or below the existing amount of such mortgage or maintaining any loan, extension of credit, guarantee, or other financial transaction with any insured institution disclosed by the RESPONDENT in the financial disclosure made pursuant to paragraphs 10 through 12 hereof. Before the RESPONDENT applies or makes a request to any insured institution to engage in any excepted transaction permitted under

subparagraphs b through f above, the RESPONDENT shall provide such insured institution with a copy of the ORDER and the STIPULATION and CONSENT.

RESTITUTION

4. RESPONDENT shall individually make restitution in the amount of $15,000,000 to correct the conditions resulting from the unsafe and unsound practices and violations of law, regulations, and rules set forth against the RESPONDENT in the NOTICE. The foregoing order of restitution may be enforced by the OTS pursuant to 12 U.S.C. § 1818(i)(1), however, the OTS may only seek to satisfy the foregoing order of restitution from the following sources:

a. any asset with a value that exceeds by $50,000 or more the amount of any consideration paid by the RESPONDENT for the asset; and

b. any group of assets that in the aggregate, over the life of the judgment, exceed a value of $100,000 and are acquired through individual transfers in which the value of the assets transferred exceeds by $15,000 or more the amount of any consideration paid by the RESPONDENT. For purposes of determining whether assets are subject to aggregation under this subparagraph, nominally separate transfers from a single source, except those made to pay reasonable and necessary living expenses, during a one year reporting period shall be considered together as an individual transfer.

5. In the event the OTS obtains through execution any such asset, the RESPONDENT will be entitled to reimbursement for any

consideration actually paid for the asset, less the reasonable expenses incurred by the OTS in obtaining execution. The aggregate value of any inheritance from or any insurance benefit paid on the life of persons who are or have been named Respondents in the NOTICE shall be considered to be an asset subject to execution in accordance with the terms of subparagraph 4.b. above. Assets acquired through inheritance from or insurance benefits paid on the life of other persons shall not be subject to execution. Nothing contained in this paragraph shall be construed to permit execution upon assets, or proceeds from the sale of assets, or appreciation in value of assets, acquired in a manner that qualifies to be reported by the RESPONDENT on his federal income tax return, nor upon any asset that is not subject to execution under subparagraphs 4.a. and 4.b. above, as of the date of the issuance of this ORDER or as of the date of acquisition of the asset. Any federal or state income tax refund shall not be subject to execution under this subparagraph.

6. If the OTS determines in good faith that the RESPONDENT has acquired assets from which the OTS, pursuant to paragraphs 4 and 5, may seek to satisfy the foregoing order of restitution, OTS may enforce the ORDER and, without prior notice to the RESPONDENT, seek to execute on such assets of the RESPONDENT. In any action initiated by the OTS, as provided in this paragraph, OTS shall have the burden of making a prima facie showing that RESPONDENT has acquired assets from which OTS may satisfy the foregoing order of restitution after which the burden shall shift to the RESPONDENT

who shall have the burden of proving by a preponderance of the evidence that any asset in question is exempted from the foregoing order of restitution pursuant to paragraph 4.

7. In the event it is determined in the manner set forth in paragraph 8 below that RESPONDENT has made any intentional, material misrepresentation, misstatement, or omission in any financial statement provided to the OTS under the terms of this ORDER, the RESPONDENT's obligation to make restitution under the ORDER shall become immediately due and payable and subject to satisfaction by the OTS by execution upon any non-exempt assets of the RESPONDENT without limitation. The spouse of the RESPONDENT by executing the STIPULATION and CONSENT along with the RESPONDENT agrees that any such intentional material misrepresentation shall subject all non-exempt assets of the RESPONDENT and his or her spouse to satisfaction by the OTS regardless of whether any such asset is held in the name of one spouse, the other, or jointly. The consequences that flow under this ORDER from an intentional material misrepresentation in the financial disclosure shall not be deemed to supplant, exclude, modify, or affect the consequences of such a misrepresentation under any applicable civil, criminal, or adminstrative law.

8. If the OTS determines in good faith that the RESPONDENT has failed to provide the financial disclosure ordered in paragraphs 11 through 16 of the ORDER or the RESPONDENT has made an intentional material misrepresentation in his financial disclosure, the Director of OTS may, at his discretion and without prior notice to the RESPONDENT, (a) issue and serve a notice of charges upon the RESPONDENT pursuant to 12 U.S.C. § 1818(b), or (b) apply to the United States District Court of competent jurisdiction to enforce the ORDER pursuant to 12 U.S.C. § 1818(i)(1). Nothing hereunder, however, will preclude the OTS from seeking other appropriate remedies under 12 U.S.C. § 1818. In any action initiated by the Director of OTS, as provided in subparagraphs 8(a) and (b) above, in which it is asserted by the OTS that the RESPONDENT has violated paragraphs 10 through 16 of the ORDER by making a material omission or misrepresentation, materially misstating the net worth of RESPONDENT and his spouse, or otherwise violating the terms set forth in paragraphs 10 through 16 of the ORDER, the OTS shall have the burden of making a prima facie showing of such violation after which the burden shall shift to the RESPONDENT who shall have the burden of proving by a preponderance of the evidence that any material omission, misrepresentation or misstatement or other violation was unintentional. In order to determine that any misrepresentation, misstatement, or omission is unintentional, the Director of OTS must find that the RESPONDENT acted in good faith, undertook reasonable inquiry, and had no reason to believe that the financial disclosure contained any material misrepresentation,

misstatement, or omission. A misrepresentation attributable to the spouse or former spouse of the RESPONDENT shall not be considered to be intentional if the misrepresentation concerns assets or liabilities of the spouse or former spouse held separately from the RESPONDENT or transfers made by the spouse or former spouse without the knowledge of the RESPONDENT, the RESPONDENT exercises no control over the manner in which the asset or liability is reported or transferred by the spouse or former spouse, and the RESPONDENT, after review of the financial disclosure and the information on which they are based, has no reason to believe, on the basis of the information provided, that they contain any misrepresentation attributable to the spouse or former spouse. In order to determine that any misrepresentation, misstatement or omission is material, the Director of OTS must find that such misrepresentation, misstatement or omission caused the net worth of the RESPONDENT to be understated by $50,000 or more. If, after a hearing before a District Court of competent jurisdiction or before the OTS, as provided in 12 U.S.C. § 1818(b), a District Court or the Director of OTS finds that RESPONDENT has violated his obligation to make financial disclosure as set forth in paragraphs 10 through 16, the amount of restitution that the RESPONDENT is obligated to make in paragraph 4 of this ORDER shall be increased by the amount by which it is determined by the District Court or the Director of OTS that the RESPONDENT misstated his net worth.

9. Any payments made by or on behalf of the RESPONDENT in satisfaction of this order of restitution shall be made to the

Resolution Trust Corporation ("RTC") and a copy of the check shall be sent to the Office of Thrift Supervision, Office of the Chief Counsel, Special Trial Division, 1700 G Street, N.W., Washington, D.C. 20552.

FINANCIAL DISCLOSURE

10. Prior to the issuance of this ORDER, RESPONDENT provided the OTS with the financial disclosure set forth in paragraph 11 below which was accompanied by sworn affidavits, attesting to the accuracy of such financial disclosure, executed by those persons required to submit the financial information in such disclosure. This disclosure and the accompanying affidavits were expressly relied upon by the OTS in agreeing to enter into the STIPULATION and CONSENT and the ORDER. The information contained in the disclosure demonstrated that the RESPONDENT presently has a negative or insubstantial net worth.

11. The financial disclosure of the RESPONDENT included (a) a current sworn statement of financial condition as of December 31, 1991, (b) copies of individual income tax returns for calendar years 1989, 1990 and 1991, and (c) statements detailing each transfer of assets made between February 1984 and December 31, 1991, to or from the RESPONDENT, his or her spouse, former spouse or any child, including emancipated children and the spouse or offspring of such emancipated children, with a total aggregate value per transfer of $15,000 or more. The statements of financial condition were required to truthfully and accurately disclose all assets, liabilities, and net worth of the RESPONDENT, his or her

spouse, former spouse, and all dependent children. The assets and transfers disclosed included those to which the RESPONDENT or members of his immediate family hold, convey or receive legal, equitable, beneficial title or interest, whether such title or interest is liquidated, inchoate or contingent.

12. The RESPONDENT shall, within 15 days of the entry of the ORDER, either (a) provide a sworn affidavit under penalty of perjury stating that the previously submitted financial disclosure described in paragraph 11 is still true and correct or, in the alternative, (b) submit financial disclosure, updated to the date of this ORDER, of the nature described in paragraph 11 above, accompanied by a sworn affidavit under penalty of perjury that the information contained in such updated financial disclosure is true and correct.

13. For a period of seven (7) years following the execution of the ORDER, RESPONDENT shall submit, on the anniversary of the issuance of the ORDER to the OTS, the following additional financial disclosure accompanied by a sworn affidavit under penalty of perjury of the RESPONDENT stating that the accompanying financial disclosure is true and correct:

a. a current statement of the financial condition of the RESPONDENT and his spouse as of the most recent calendar year-end;

b. copies of the most recently filed income tax returns of the RESPONDENT and his spouse;

c. a statement setting forth all transfers since the date of the previous financial disclosure made to or from the RESPONDENT

or his spouse or dependent children from any source that singularly, or when aggregated with other payments from the same source, exceed $15,000 along with a statement setting forth the nature each such transfer; and

d. a statement of all assets of any nature whatsoever, including gifts and bequests, received by the RESPONDENT since the date of the previous financial disclosure made by the RESPONDENT, the value of which exceed by $15,000 or more the amount of any consideration paid by the RESPONDENT for the asset. The assets, liabilities and transfers that must be disclosed pursuant to this paragraph shall include all assets, liabilities and transfers of the nature described in paragraph 11.

14. Solely for the purpose of assessing the accuracy of representations made by the RESPONDENT in the financial disclosure required under the ORDER, the RESPONDENT shall, upon reasonable notice and without service of a subpoena or other process, permit the OTS to inspect and copy all books, records, receipts and documentation of any nature whatsoever that he maintains or are under his control which support, document or in any way relate to such financial disclosure. The OTS may not request such inspection more than once a year.

15. Limited only to the financial disclosure for the time period required by paragraphs 12 and 13 of this ORDER, the RESPONDENT shall provide to the OTS, upon request, a signed waiver in a form satisfactory to the IRS permitting the OTS to obtain access to all tax returns and tax return information maintained by the IRS with respect to the RESPONDENT and his spouse.

16. The financial disclosure provided to the OTS by the RESPONDENT pursuant to the terms of the ORDER shall be governed by the terms and conditions of confidentiality set forth below and shall be binding upon the OTS its employees, representatives, and agents.

a. The financial disclosure shall be used by the OTS solely for the purposes set forth in this ORDER. These materials and the information contained therein shall not be used for any other purpose.

b. The OTS shall not advise any person, or any other agency or department of the federal government or any officer or employee thereof, or any agency or department of any state government or any officer or employee thereof, of its possession of the financial disclosure, except as provided below. The OTS shall not deliver the financial disclosure, or disclose any information contained therein, to any person or to any other agency or department of the federal government or any officer or employee thereof, or to any agency or department of any state government or any officer or employee thereof, except as provided below. Notwithstanding the foregoing limitation, the OTS may disclose any financial

information that it has received or receives from the RESPONDENT, pursuant to the provision of paragraphs 11 through 15 above, as follows: (i) Dislosure may be made to any agency or department of the federal government or any officer or employee thereof, or any agency or department of any state government or any officer or employee thereof, which financial information establishes a factual basis for a good faith belief by the OTS that a violation of any law, rule, regulation or order enforced by such agency or department has occurred or is likely to occur; (ii) Disclosure may be made when it is required by order of a Federal Court, provided that the OTS shall follow the provisions of subparagraph 16.c. below with respect to such process; and (iii) Disclosure may be made as necessary to enforce or perform the provisions of paragraphs 6, 7 and 8 above. Ten days prior to making any such disclosure to any federal or state agency or department, the OTS shall provide the RESPONDENT notice of its intention to do so.

c. In the event the OTS is served with a subpoena, court order, Freedom of Information Act request, or other request seeking or requiring disclosure of any financial information received from the RESPONDENT pursuant to the ORDER, the OTS shall, as soon as practical, notify the RESPONDENT by providing to the RESPONDENT's counsel of record a copy of the subpoena, order, or request.

d. Delivery of the financial disclosure to the OTS does not constitute and may not be construed as a waiver of any privilege applicable to the documents or to the information contained therein, including but not limited to the privilege against self-incrimination under the Fifth Amendment to the United States Constitution.

PROHIBITION

17. RESPONDENT shall not hold any office in, or participate in any manner in the conduct of the affairs of institution(s) or other entity(ies) as set forth in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) (Supp. I 1989), without the prior written approval of the Director of OTS, or his designee, and, if appropriate, the approval of any other Federal financial institutions regulatory agency. Pursuant to Section 8(e)(6) of the FDIA, 12 U.S.C. § 1818(e)(6) (Supp. I 1989), conduct prohibited by this ORDER includes, inter alia, the solicitation, transfer, or exercise of any voting rights with respect to any securities issued by any insured depository institution.

COOPERATION

18. RESPONDENT shall, at the OTS's request, on reasonable notice and without service of a subpoena, provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to the NOTICE and any continuing litigation or proceeding brought by the OTS as a result of its investigation relating to Lincoln Savings and Loan Association ("Lincoln") and its institution affiliated parties, except that

RESPONDENT does not waive his privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If the RESPONDENT invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS may inquire or the production of any document requested by the OTS and OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., RESPONDENT will, consistent with any such grant of immunity, provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding on the matters for which immunity is given.

MISCELLANEOUS

19. Solely in any bankrupcty proceeding in which RESPONDENT's obligation to make the payment of restitution provided for in paragraphs 4 through 9 of the ORDER is subject to discharge, the RESPONDENT will in no manner contest the OTS's assertions that (a) the obligation is for and (b) the ORDER arises out of, defalcation while acting in a fiduciary capacity and therefore that the obligation to make the payment of restitution is nondischargeable under 11 U.S.C. §§ 523(a)(4) and (11).

20. In consideration of RESPONDENT's agreement to comply with this ORDER, and, inter alia, the recitals set forth in the STIPULATION and CONSENT, OTS agrees to (i) dismiss RESPONDENT from the above-captioned enforcement proceeding and (ii) forebear from bringing any further enforcement proceedings against the RESPONDENT pursuant to 12 U.S.C. § 1818(b)(6) for restitution, reimbursement,

indemnification or guarantee against loss based upon any claims asserted or that could have been asserted by the OTS as of the date of this ORDER.

21. The OTS will not commence any further enforcement proceeding against the RESPONDENT for conduct engaged in while participating in the affairs of Lincoln Savings and Loan Association without first notifying the RESPONDENT that the OTS intends to institute such proceeding and providing the RESPONDENT with an opportunity to discuss the factual and legal basis for such proceeding.

22. RESPONDENT'S obligation to make restitution under paragraphs 4 through 9 of the ORDER are his sole and separate obligation and will only be reduced by payments made to the RTC by or on behalf of the RESPONDENT, but will not be reduced or subject to an off set of any nature whatsoever as a result of any payment made by or on behalf of any other person or entity in this or any other proceeding.

23. The STIPULATION and CONSENT, this ORDER, the restitution contemplated as part of this ORDER, and the dismissal of RESPONDENT from the above-captioned OTS administrative proceeding are solely for the purposes of resolving the charges set forth in the NOTICE as they pertain to the RESPONDENT only, and, except as provided in paragraph 20 of the ORDER, do not resolve, affect or preclude any other administrative, civil or criminal claim or proceeding which may be brought against RESPONDENT or any other person named in the NOTICE by OTS or another governmental entity.

24. The RESPONDENT shall send any financial disclosure required pursuant to this ORDER to the Regional Director of the OTS West Regional Office, or his successor, at the following address:

Regional Director
Office of Thrift Supervision
1 Montgomery Street, Suite 400
San Franscisco, CA 94104

25. This ORDER is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j) (Supp. I 1989).

26. This ORDER shall become effective on the date it is issued.

27. The claims against the RESPONDENT in the NOTICE are hereby severed from the claims against the remaining respondents named in the NOTICE upon the date the ORDER is executed by the Director.

Approved as to form
and content:

/S/

RESPONDENT

THE OFFICE OF THRIFT SUPERVISION

/S/

BY: _____
TIMOTHY RYAN, DIRECTOR
OFFICE OF THRIFT SUPERVISION