

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of
American Savings
and Loan Association
New York, New York

Re: Northeast Regional Director

Resolution No. NE92-055

Dated: May 28, 1992

STIPULATION AND CONSENT TO ISSUANCE
OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Northeast Regional Office, OTS, and American Savings and Loan Association ("American" or "Association"), stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against American pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b). American desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease-and-desist litigation against American with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) American is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' Loan Act, as amended by FIRREA. Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Pursuant to Section 3 of the FDIA, the Director of OTS is the "appropriate Federal Banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, the Association is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

(1) Section 563.176(e) of the OTS Regulations, 12 C.F.R. Section 563.176(e) (regarding interest rate risk management);

(2) Section 564.8(c)(3) of the OTS Regulations, 12 C.F.R. § 564.8(c)(3) (regarding appraiser review);

(3) Section 563.172(a) of the OTS Regulations, 12 C.F.R. Section 563.172(a) (regarding appraisal of properties held as REO and in insubstance foreclosure); and

(4) Section 563.170(c) of the OTS Regulations, 12 C.F.R. Section 563.170(c) (regarding establishment and maintenance of records).

(b) The Association shall cease and desist from violations of the following provisions of the March 16, 1990 Supervisory Agreement:

(1) Paragraph 1.(a) regarding lending restrictions on multi-family loans, construction loans, and overdraft loans;

(2) Paragraph 4.(b) regarding establishment and implementation of an internal loan review and asset classification system;

(3) Paragraph 4.(c) regarding development and implementation of a three-year business plan;

(4) Paragraph 4.(d) regarding development and implementation of an interest rate risk policy;

(5) Paragraph 4.(g) regarding development and implementation of an internal audit program;

(6) Paragraph 5.(b) regarding appraisals of real estate owned at the time of acquisition; and

(7) Paragraph 6 regarding, among other things, (i) formation of an audit committee to direct and review the progress of the external consultant engaged to assist management in establishing a plan for managing and reducing problem assets and (ii) requiring the external consultant to provide a periodic assessment report to the Assistant Director or his designee.

(c) Pursuant to Thrift Bulletin 50, the Association shall not enter into any third party contract in excess of \$15,000 which is outside the normal course of the Association's business without obtaining the prior written nonobjection of the Regional Director.

(d) Pursuant to Regulatory Bulletin 27, the Association shall submit to the Regional Director for prior written nonobjection all employment contracts with directors and employees of the association.

(e) Pursuant to Section 563.41(e)(2), the Association and any subsidiary shall provide to the Regional Director a minimum of thirty days' prior written notice of any proposed covered transaction with any affiliate or subsidiary of the Association.

(f) Pursuant to Thrift Bulletin 45 and Section 914 of Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended ("FIRREA"), the Association shall notify the Regional Director, who will provide written approval or disapproval, of any proposed (i) addition or replacement of a director or hiring or replacement of a senior executive officer and (ii) change in responsibilities of any individual resulting in his or her assumption of a senior executive officer position, including a promotion or a lateral transfer from one senior executive officer position to another.

(g) The compliance requirements of subparagraphs (a) through (f) hereof shall not be construed as an authorization for the Association to engage in the activities governed by the aforesaid laws, rules, and regulations. To the extent that it is lawful for American to engage in such activities, and if provisions of this Order set forth more strict restrictions, limitations and requirements than are set forth in applicable laws and regulations, or in the March 16, 1990 Supervisory Agreement or the March 23, 1992 Capital Directive, then under such circumstances the Association shall, at all times, comply with and adhere to the more strict restrictions, limitations, and requirements otherwise set forth in the Order.

1.02. Employment of New Director and Chief Executive Officer

The Board shall actively seek and shall employ a new director and chief executive officer. The Board shall furnish the OTS with a monthly report on the status of the Board's efforts to employ a director and chief executive officer.

1.03. Hiring of Controller

The Association shall actively seek and shall employ a controller to provide assistance to EVP Shagoury and/or to assume the financial accounting responsibilities, including maintenance of on-going compliance with regulatory reporting and monitoring requirements. The Board shall furnish the OTS with a monthly report on the status of the Board's efforts to employ a controller.

1.04. Board and Committee Minutes

Detailed minutes of all Board and committee meetings shall be maintained and recorded on a timely basis. The Secretary shall prepare in advance, and the Board or committee shall follow, a detailed written agenda at each meeting. Such agenda shall not preclude consideration of any other matter. Minutes shall reflect discussions held, policies and procedures approved, and information reported by management to the Board. See generally, "OTS Director Information Guidelines", a copy of which is attached.

1.05. Loan Monitoring and Inspection Systems

The Association shall establish and implement an adequate loan monitoring system, which shall include obtaining and analyzing updated financial information on a periodic basis, and an adequate inspection system that will enable the Association to assess a project's current condition, reconcile work completed and funds disbursed, and assess completion status.

1.06. Interest Rate Risk Management Policy

Within 60 days from the date of this Order, the Board shall amend its interest rate risk management policy in accordance with paragraph 4(d) of the March 16, 1990 Supervisory Agreement and Sections 563.176 and 571.3 of the OTS Regulations and OTS Thrift Bulletins 13, 13-1 and 13-2. Among other things, the amendments shall include maximum exposure limits with respect to changes in the market value of portfolio equity over various interest rate scenarios. The Association shall immediately implement its existing policy, including maintenance of committee minutes, performance of a review of its current exposure to interest rate risk, and development of a five-year financial plan.

The Board shall review the results of operations at least quarterly and shall make such adjustments as it

considers necessary and appropriate to the interest rate risk management policy, including adjustments to the authorized acceptable level of interest rate risk. The Board's review shall be documented in the minutes.

1.07. Internal Audit Program

In accordance with paragraph 4(g) of the March 16, 1990 Supervisory Agreement, the Association shall immediately implement the Board adopted internal audit program, including development of an annual audit schedule, adherence to audit programs, and generation of comprehensive audit workpapers documenting areas reviewed and the basis for the auditor's conclusions. The internal audit function shall be independent of management and report directly to the Board.

In addition, if it has not already done so, the Board shall ensure that appropriate corrective actions are taken with respect to the deficiencies noted in the audit report prepared by the Association's independent auditors for the fiscal year ended June 30, 1991.

1.08. One-to-Four Family Mortgage Lending Policy

The Board shall revise its one-to-four family mortgage lending policy to (i) define the minimum acceptable length of employment for loan applicants, (ii) require analysis and verification of secondary sources of income, and (iii) require analysis of the debt-to-income ratios under varying interest rate scenarios for adjustable rate mortgage loans.

1.09. Consumer Credit Advance Checking Policy

The Board shall revise the consumer credit advance checking policy to (i) define a maximum acceptable total monthly debt-to-income ratio, and (ii) require management to implement adequate loan documentation procedures (with respect to, e.g., verification of employment, verification of deposits, and credit analysis).

1.10. Business Plan

Within 60 days from the date of this Order, the Board shall develop and adopt a three year business plan in accordance with paragraph 4(c) of the March 16, 1990 Supervisory Agreement, which shall include annual operating budgets. A written review of (and any necessary updates to) the business plan shall be prepared and approved by the Board on a quarterly basis. Such review shall be submitted to OTS within 30 days following the end of each calendar quarter.

The business plan shall include the following: (a) the Association's objectives, operating strategy and business philosophy; (b) present financial condition; (c) credit exposure; (d) regulatory capital position; (e) profit composition; (f) market penetration; (g) interest rate risk management goals; (h) deposit solicitation strategies; (i) projected sources and uses of funds; (j) asset/liability management goals; (k) internal audit program; and (l) new business initiatives.

1.11. Insubstance Foreclosures

Within 60 days from the date of this Order, the Board shall adopt and implement a policy for determining insubstance foreclosures. The policy shall require, among other things, (a) proper accounting of such foreclosures and (b) the Association to obtain appraisals upon a determination that an insubstance foreclosure exists, in accordance with Section 563.172(a) of the OTS Regulations. If it has not already done so, the Association shall immediately order appraisals for existing insubstance foreclosures.

1.12. Appraisals of Real Estate Owned

In accordance with Section 563.172(a) of the OTS Regulations, the Association shall appraise each parcel of real estate owned at the time of acquisition, unless an appraisal has been obtained earlier due to a determination that an insubstance foreclosure exists.

1.13. Reappraisals of Certain Properties

If it has not already done so, the Association shall obtain new appraisals for the sixteen properties listed on pages 29-31 of the September 17, 1991 Report of Examination. The Association shall report to the OTS on a monthly basis the status of the appraisals not yet received. When an appraisal is received, the report shall include the updated market value for each property and shall indicate whether an additional valuation allowance was required as a result of the reappraisal.

1.14. Annual Appraiser Review

In accordance with Section 564.8(c)(3) of the OTS Regulations, the Association shall review on an annual basis the performance of all approved appraisers used within the preceding 12 month period for compliance with (i) the Association's appraisal policies and procedures and (ii) the reasonableness of the value estimates reported. The annual review shall be documented and the finding presented to the

Board. If it has not already done so, the Association shall document its 1990 review and present the findings to the Board.

1.15. Accrual of Interest on Delinquent Loans

The Association shall reserve for, or write-off, uncollected interest on loans delinquent in excess of 90 days.

1.16. Loans to One Borrower

The Association shall cure the outstanding violation of the loan to one borrower regulation, Section 563.93 of the OTS Regulations, with respect to Carmine Gargano and related interests as expeditiously as circumstances permit.

1.17. Internal Loan Review, Asset Classification, and Valuation Allowance System

Within 60 days of the Date of this Order, the Association shall revise and implement its internal loan review, asset classification, and valuation allowance system as required in paragraph 4(b) of the March 16, 1990 Supervisory Agreement and by Section 563.160 of the OTS Regulations (regarding classification of certain assets). This system shall be documented in a Board approved policy statement.

This system shall be designed to ensure that all loans originated, renewed, modified or restructured comply with all regulations and established internal policies, and that all loan documentation has been properly prepared, recorded and reviewed by counsel.

The system shall include the following items with respect to determination of valuation allowances:

(i) documentation of the methodology and rationale for the selection of specific asset category general valuation allowance ("GVA") factors;

(ii) differentiation between the relative risk of specific assets in the same general category; and

(iii) application of specific separate GVA factors to adversely classified assets and nonclassified assets.

The internal loan review process shall be performed at least quarterly by a person who is independent of the loan approval, origination and appraisal processes and who reports directly to the Board of Directors. The individual(s) performing the review shall utilize the information compiled by the Association's outside consultant, to the extent that such information is current. The loan review reporting shall be documented in the Board minutes.

In addition, within 60 days of the date of this Order, the Association, if it has not already done so, shall submit to the Regional Director a plan showing how the Association intends to reduce its classified assets to an acceptable level. Further, if it has not already done so, the Association shall submit to the OTS a September 30, 1991 Thrift Financial Report amended to show classified assets as adjusted pursuant to the findings of the September 17, 1991 Report of Examination.

PART II
PROVISIONS APPLICABLE TO CEASE AND
DESIST ORDER

BOARD OF DIRECTORS' RESPONSIBILITIES

2.01. Fiduciary Duty to the Association

(a) Notwithstanding that certain provisions of this Enforcement Order require the Board of Directors to submit various matters to the Regional Director for the purpose of receiving approval, notice of acceptability or non-objection, such regulatory oversight does not derogate or supplant the fiduciary duties owed by the members of the Board of Directors of the Association. The Board of Directors, at all times, shall have the ultimate responsibility for overseeing the safe and sound operation of the Association.

(b) In connection with its oversight of the Association, the Board of Directors shall, at a minimum, obtain and consider all applicable information suggested in the Director Information Guidelines, published by the OTS in December, 1989.

2.02. Board Review of Compliance With This Order

(a) The Board of Directors of the Association shall take prompt action to cause the Association to fully comply with this Order.

(b) Each month, the Board of Directors shall adopt a formal resolution (the "Compliance Resolution") resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding calendar month, the Association has complied with each provision of this Order currently in effect, except as otherwise stated. The Compliance Resolution shall: (i) specify in detail how, if at all, full compliance was found not to exist; and (ii) identify all notices of exemption or other exceptions issued by the Regional Director that were outstanding as of the date of the Compliance Resolution.

(c) No later than the tenth day of each month, the Association shall submit to the Regional Director a certified true copy of each such Compliance Resolution adopted for the preceding month. The Board, by virtue of the Association's submission of a certified true copy of each Compliance Resolution to the Regional Director, shall be deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution, except that in the event that one or more Directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the Association.

DEFINITIONS

2.03. (a) For all purposes of this Order, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms used in this Enforcement Order have the meanings assigned to them in this Section and include the plural as well as the singular, (ii) all accounting terms not otherwise defined have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, except that if such terms are defined in the Rules and Regulations of the OTS, such regulatory definitions shall be controlling, (iii) all terms not otherwise defined herein that are defined in the HOLA, the Federal Deposit Insurance Act, or the Rules and Regulations of the OTS or its publicly available Bulletins and Advisory Memoranda shall have the meanings assigned to them in such statutes, Rules and Regulations, Bulletins, and advisory memoranda, and (iv) all technical words or terms not subject to a definition in this Order shall have the meanings that accord with the best custom and usage in the thrift and banking industries.

"Business Day" means any weekday excluding Federal holidays.

"FDIA" means the Federal Deposit Insurance Act, as amended.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183, as amended.

"HOLA" means the Home Owners' Loan Act, as amended, 12 U.S.C. §§ 1461 et seq..

"OTS" refers to the Office of Thrift Supervision, United States Department of the Treasury, or its successor.

"Regional Director" or his successor is the "senior supervisory official" within the meaning of Section 723(d) of the FIRREA, and refers to the Regional Director of the Northeast region of OTS. All references to the Regional Director shall include the Regional Director and/or his designee(s).

"Savings association" shall have the meaning as set forth in Section 2(4) of the HOLA, 12 U.S.C. § 1462(4).

(b) The words "herein", "hereof", and "hereunder" and other words of similar import refer to this Order as a whole and not to any particular Part, Section, Paragraph, or other subdivision, unless the context otherwise requires.

(c) Certain of the terms herein may refer to terms applicable to a savings association in stock form. If the Association is chartered in mutual form, then: (i) all references to stockholders shall be treated as references to the members of the Association; (ii) all references to deposits shall be treated as references to the accounts of the Association; and (iii) any other terms applicable solely to stock-form associations shall be given the meaning most appropriate for a mutual-form association.

SUCCESSOR STATUTES, REGULATIONS, GUIDANCE, AMENDMENTS

2.04. Reference in this Order 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 hereof and references to successor provisions as they become applicable.

NOTICES

2.05. Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent,

waiver or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with:

(a) the OTS by the Association shall be sufficient for every purpose hereunder if in writing and mailed, first class or airmail postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, 10 Exchange Place, 18th Floor,

Jersey City, New Jersey 07302, or telecopied to (201) 413-7543 and confirmed by mail, first class or airmail postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

(b) the Association by the OTS shall be sufficient for every purpose hereunder if in writing and mailed, first class or airmail postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Association at 420 Park Avenue South, New York, New York 10016, or telecopied to the president of the Association at (212) 686-2729 and confirmed by mail, first class or airmail postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

2.06. Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Order, then, in the event such notice was sent by the United States mail, there shall be a presumption that the notice was received two Business Days after the date of the postmark on the envelope in which the notice was enclosed.

DURATION, TERMINATION OR SUSPENSION OF ORDER

2.07. This Order shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director or the Regional Director (including any authorized designee thereof).

2.08. The Regional Director (or his designee), in his or her sole discretion, may, by written notice, suspend any or all provisions of this Order.

EFFECT OF HEADINGS

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

SEPARABILITY CLAUSE.

2.10. In case any provision in this Order 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.

NO VIOLATIONS OF LAW, RULE, REGULATION
OR POLICY STATEMENT AUTHORIZED.

2.11. (a) Nothing in this Order shall be construed as allowing the Association to violate any law, rule, regulation, or policy statement to which it is subject.

(b) As an Association chartered under State law and subject to regulation and supervision by a State regulatory authority, the Association may be subject to various restrictions imposed by the appropriate State regulatory authority. The Association must continue to comply with any such restriction, notwithstanding the receipt by the Association of authorizations or notices of non-objection of the Regional Director, except to the extent that such restrictions have been deemed to be pre-empted by Federal law.

SUPERVISORY AGREEMENT DATED MARCH 16, 1990

2.12. The Supervisory Agreement dated March 16, 1990 remains in full force and effect. In the event that a provision or requirement of the Supervisory Agreement conflicts with the this Order or the Capital Directive dated March 23, 1992, then this Order or the Capital Directive dated March 23, 1992 shall be applicable.

RELATIONSHIP TO FDICIA

2.13. To the extent that any provision of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2236 (December 19, 1991) ("FDICIA") or any regulation(s) promulgated thereunder relating to undercapitalized depository institution imposes more restrictive requirements than any provision contained in this

