

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

FIRST SAVINGS BANK, FSB)
Manhattan, Kansas)

FIRST MANHATTAN CORPORATION,)
Manhattan, Kansas)

Philip M. Brokenicky, Director)
Frank Eaton, Director)
David J. Fiser, Director)
Barry L. Flinchbaugh, Director)
Charles W. Hughes, Director)
Arthur F. Loub, Director)
Caroline F. Peine, Director)
Richard H. Seaton, Director)
Paul Van Nostran, Director)
James R. Wild, Director)
_____)

Resolution No. TOP-91- 05
Dated: June 27, 1991

ORDER TO CEASE AND DESIST

WHEREAS, First Savings Bank, a Federal Savings Bank, Manhattan, Kansas, and First Manhattan Corporation, its subsidiary service corporation (collectively "First Savings" or the "Institution"), through their directors, and the hereinafter named directors, individually; Philip M. Brokenicky, Frank Eaton, David J. Fiser, Barry L. Flinchbaugh, Charles W. Hughes, Arthur F. Loub, Caroline F. Peine, Richard H. Seaton, Paul Van Nostran, and James R. Wild (collectively "the directors") have executed a Stipulation and Consent to Issuance of Order to Cease and Desist ("Stipulation") that is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Region ("Regional Director"); and is incorporated herein by reference; and

WHEREAS, First Savings and the directors, in the Stipulation, have consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to §8(b) 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.S. § 1818(b) (Law. Co-op. Supp. 1990).

NOW, THEREFORE, IT IS ORDERED that the directors shall cause First Savings to cease and desist from, and the Institution and its directors, officers, employees, agents, subsidiaries and service corporations shall cease and desist from, any violation of, or the aiding and abetting of any violation of:

- A. Section 563.43(b) of the Rules and Regulations of the Office of Thrift Supervision ("OTS Regulations"), 12 C.F.R. § 563.43(b) (1990);
- B. Section 563.170 of the OTS Regulations, 12 C.F.R. § 563.170 (1990);
- C. Section 563.160 of the OTS Regulations, 12 C.F.R. § 563.160 (1990);
- D. Section 563.233 of the OTS Regulations, 12 C.F.R. § 563.233 (1990);
- E. Section 571.7(b) of the OTS Regulations, 12 C.F.R. § 571.7(b) (1990);
- F. Section 563.93(c) of the OTS Regulations, 12 C.F.R. § 563.93(c) (1990);
- G. Section 564.4 of the OTS Regulations, 12 C.F.R. § 564.4 (1990);

H. Sections 571.21 and 563.37(a) of the OTS Regulations, 12 C.F.R. § 571.21 and 563.37(a) (1990);

I. Sections 23A, 23B and 22(h) of the Federal Reserve Act;

IT IS HEREBY FURTHER ORDERED that:

I. Definitions

1. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations or as such definition is amended after the execution of this Order, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, shall have meanings that accord with their best custom and usage in the savings and loan industry. However, for the purposes of this Order, except as otherwise indicated, the following definitions shall apply:

- a. a "set" is a group of loans, participations, investments, securities, or other assets related, by being sold or pledged to, purchased from, or exchanged with any persons, entities, or Institutions acting together in a single transaction;

- b. "invest in" means to make, originate, purchase, acquire, guarantee, refinance, modify, extend, renew, or to commit to do any of these;
- c. "transfer" means to sell, assign, pledge, exchange, or to commit to do any of these;
- d. "real estate investment" means the net book value of real estate purchased, acquired by foreclosure or deed in lieu thereof, or owned in any manner, inclusive of any expenditures incurred in connection with holding or improving such real estate and following adjustment for any loss reserves or allowances;
- e. "affiliated person," as used in this Order, shall have the meaning as defined in 12 C.F.R. Section 561.5 (1990);
- f. "affiliate" shall have the meaning as defined in Section 23A of the Federal Reserve Act, 12 U.S.C.S. §371c (Law. Co-op. Supp. 1990).

2. The statutory and regulatory citations herein shall be in the form as codified or promulgated as of the date of this Order, or as amended or renumbered thereafter.

II. Books and Records

3. The directors shall cause the Institution to maintain, and First Savings shall maintain, its books and records in

compliance with the requirements of Sections 563.170 and 563.233 of the OTS Regulations, 12 C.F.R. §§563.170 and 563.233 (1990).

4. Within ninety (90) days from the effective date of this Order, the directors shall cause the Institution to develop (and thereafter, maintain in an orderly fashion), and First Savings shall develop (and thereafter, maintain in an orderly fashion), sufficient records, including accounting records, systems and controls as required to provide a complete and accurate record of all business transactions involving the Institution and/or its subsidiaries and to represent accurately their financial condition. Furthermore, First Savings shall prepare its financial statements and other reports to the OTS in accordance with the OTS Regulations, policies, directives and other guidelines, and in accordance with generally accepted accounting principles, as required by Section 563.233 of the OTS Regulations, 12 C.F.R. §563.233.

The Board of Directors shall certify in writing to the Regional Deputy Director of the Midwest Region ("Regional Deputy Director"), within ninety (90) days of the effective date of this Order, that adequate records and accounting systems have been developed and implemented, and that all outstanding cash accounts, suspense accounts and general ledger accounts have been reconciled and appropriately recorded and reported on the Institution's financial statements.

Within forty-five (45) days of the effective date of this Order, the Board of Directors shall submit to the Regional Deputy

Director a report describing the progress made in complying with this paragraph 4.

5. Within ninety (90) days after the effective date of this Order, the Board of Directors shall provide to the Regional Deputy Director an internal control study evaluating the Institution's current internal control procedures and setting forth recommendations for the improvement of these procedures. The study should specifically address the adequacy of the Institution's internal audit department and the deficiencies in the maintenance of accurate books and records and loans-to-one-borrower record-keeping.

Within forty-five (45) days of the effective date of this Order, the Board of Directors shall submit to the Regional Deputy Director a report describing the progress made in complying with this paragraph 5.

6. The directors shall cause First Savings to comply, and the Institution shall comply, in all respects with the loan documentation requirements as set forth in 12 C.F.R. Section 563.170(c). Within ninety (90) days of the effective date of this Order, the Board of Directors is to certify in writing to the Regional Deputy Director that the Institution has implemented procedures as necessary to ensure compliance therein.

Within forty-five (45) days of the effective date of this Order, the Board of Directors shall submit to the Regional Deputy Director a report describing the progress made in complying with this paragraph 6.

7. The directors shall cause First Savings to comply, and the Institution shall comply, in all respects with the appraisal requirements as set forth in 12 C.F.R. Section 564.4. Within ninety (90) days of the effective date of this Order, the Board of Directors is to certify in writing to the Regional Deputy Director that the Institution has implemented a revised appraisal policy compliant with 12 C.F.R. Section 564.4 and has implemented such procedures as necessary to ensure compliance therewith.

III. Loan Classification System

8. Within forty-five (45) days from the effective date of this Order, the Board shall establish a loan review committee to establish and implement an internal loan review and classification system ("Loan Classification System") to review, on a monthly basis, the Institution's loan portfolio and identify and categorize problem credits. At a minimum, the Loan Classification System shall provide for:

- a. identifying the overall quality of the loan portfolio;
- b. the identification and establishment of valuation allowances for each loan in accordance with 12 C.F.R. §563.160 (1990);
- c. an identification and grouping of loans that warrant the special attention of management;
- d. for each loan identified, a statement of the amount and an indication of the degree of risk that the

loan will not be fully repaid according to its terms and the reason(s) why the particular loan merits special attention;

- e. an identification of credit and collateral documentation exceptions;
- f. the identification of and status of any violation of law, rule or regulation with respect to each adversely classified loan;
- g. an identification of loans not in conformance with the Institution's lending policy, and exceptions granted to the Institution's lending policy; and
- h. a mechanism for reporting, on a monthly basis, to the Board of Directors on the status of each loan identified and the action(s) taken by management.

A copy of the reports submitted to the Board, as well as documentation of the action taken by the Institution to collect or strengthen assets identified as problem credits, shall be kept with the minutes of the Board of Directors.

9. Within thirty (30) days from the effective date of this Order, the directors shall cause First Savings to establish and thereafter maintain, and the Institution shall establish and thereafter maintain, adequate reserves for loan losses in accordance with Section 563.160 of the OTS Regulations, 12 C.F.R. §563.160 (1990). Such reserves shall be established by charges to current operating income, together with collection of assets previously charged off. In complying with the provisions of this paragraph, the Board of Directors of First Savings shall review

the adequacy of the Institution's reserves for loan losses prior to the submission of each quarterly TFR to the OTS. The minutes of the Board meeting at which such review is undertaken shall indicate the results of the review, the amount of any increase in the reserves, and the basis for determination of the amount of the reserve provided.

IV. Transactions with Affiliates/Conflicts of Interest

10. The directors shall cause First Savings to comply, and the Institution and its subsidiaries shall comply, in all respects, with the requirements and policy guidelines of 12 C.F.R. Section 563.43, and 571.7 of the OTS Regulations and Sections 23A, 23B and 22(h) of the Federal Reserve Act. Furthermore, the Board of Directors shall immediately take any measures necessary to bring the Institution into full compliance with OTS regulations 563.43 and 571.7 and Sections 23A, 23B and 22(h) of the Federal Reserve Act, including but not limited to:

- a. within thirty (30) days after the effective date of this Order, the directors shall cause First Savings to prepare, and the Institution shall prepare and provide to the Regional Deputy Director a list of all outstanding loans or extensions of credit to affiliated persons and affiliates as of the date of this Order. The information for each loan or extension of credit shall include:

- (1) the identity of the obligor and guarantor, if any;
 - (2) the date of the loan or extension;
 - (3) the total amount disbursed;
 - (4) the amount remaining to be disbursed;
 - (5) the terms of the loan or extension;
 - (6) the terms for similar loans available to the general public;
 - (7) the collateral for the loan or extension; and
 - (8) the prospects for repayment;
- b. within sixty (60) days after the effective date of this Order, the directors shall cause First Savings to submit, and the Institution shall submit, a plan to the Regional Deputy Director detailing the actions to be taken to bring all outstanding loans to affiliated persons or affiliates into conformance with OTS Regulation 563.43. The plan shall detail the proposed date of compliance for each affiliated loan currently in violation of OTS Regulation 563.43 and the specific actions that will be taken to bring such loans into regulatory compliance. Within twenty (20) days of each quarter-end commencing September 30, 1991, the Institution is to provide a status report detailing the actions taken to bring all affiliated loans into regulatory compliance including a listing of all affiliated loans outstanding at that time not in compliance with regulations; and,

c. within sixty (60) days after the effective date of this Order, the directors shall cause First Savings to submit, and the Institution shall submit, to the Regional Deputy Director a plan concerning conflicts of interest or usurpation of corporate opportunity. At a minimum, the plan shall:

- (1) specify, by name, any director, officer, employee, agent, or attorney whose occupation or business interests has created an existing conflict of interest or usurpation of corporate opportunity or has the potential to create such occurrences in the future;
- (2) provide a specific description of each existing conflict of interest or usurpation of corporate opportunity;
- (3) identify specific areas in which such abuses could occur;
- (4) set forth the steps to be taken to eliminate any current or prevent future conflicts of interest, or corporate opportunity abuse, or the appearance thereof. The plan should include the projected dates for the elimination of the current conflicts of interest corporate opportunity abuses; and
- (5) any deviation from the plan is to be authorized by the Board of Directors, with notification and the reasoning for the deviation provided to the

Regional Deputy Director. The notification is to include a list of the directors' votes authorizing and opposing such deviation.

11. Within thirty (30) days of the date of this Order, the directors shall cause First Savings to commence, and the Institution shall commence, a review of all expenses for the period 1986 through the date of this Order which were authorized to be paid by or to Charles Hostetler. Of the expenses reviewed, the Institution is to determine which expenses were of a personal nature and unrelated to the direct interests of the Institution. The Institution is to take all necessary steps, including, if necessary, the engagement of independent legal counsel, in order to obtain reimbursement, plus applicable interest, from Mr. Hostetler for those expenses determined to be of a personal nature. Within sixty (60) days, the Institution is to provide to the Regional Deputy Director, the results of the expense analysis, the status of any reimbursement request made of Mr. Hostetler, and if applicable, the steps to be taken or which have been taken by the Institution to cause reimbursement by Mr. Hostetler.

12. Within thirty (30) days after the effective date of the Order, the Board of Directors shall commence a review of all transactions entered into between the Institution and Hostetler-affiliated entities and ascertain the adverse effect, if any, of these transactions on the Institution. Within forty-five (45) days of the effective date of this Order, the Board of Directors will submit a report to the Regional Deputy Director detailing the progress made in the review required by this

paragraph 12. Within ninety (90) days of the effective date of this Order, the Board is to provide to the Regional Deputy Director a written summary of the decision reached by the Board regarding each transaction and the rationale for each decision. The written summary should specifically include any action to be taken by the Institution to correct or resolve any adverse effects, if any, which these transactions may have had on the Institution.

13. Within thirty (30) days after the effective date of this Order, the Board of Directors shall certify in writing to the Regional Deputy Director that written policies and procedures have been implemented governing the use of Institution issued credit cards and employee expense reimbursements. These policies and procedures shall ensure that employee expense allowances and claims for reimbursements are fully documented and proper incidents to the Institution's activities.

14. Without the prior written approval of the Regional Deputy Director, the Institution and its subsidiaries shall not invest or transfer any loan to, or purchase or sell any real or personal property from, or to, the following persons, business entities, their affiliates, controlling persons, immediate family members, holding company affiliates, or affiliated persons:

- a. Landmark Hotel Corporation;
- b. Gary Keller;
- c. Emporia Hotel Venture, a Kansas General Partnership;
- d. Jack H. Brier;
- e. Howard T. Paul;

- f. Great Plains Hotel Corporation, a Kansas Corporation;
- g. Great Plains Hotel Corporation of Illinois, a Kansas Corporation;
- h. Sunwest Hotel Corporation, a Kansas Corporation;
- i. Merle Hay Partners, a Kansas J.V.; or
- j. Russellville Motel, Russellville Partners, an Arkansas Partnership.

15. The Institution shall not reimburse, indemnify, compensate or otherwise make whole any individual for any adverse financial or other consequence stemming from any transactions which are the subject matter of this Order.

V. Management Plan

16. Within sixty (60) days of the date of this Order, the directors shall cause First Savings to submit, and the Institution shall submit, to the Regional Deputy Director, a plan for the reorganization and augmentation of the Institution's management ("Management Plan"). Such Management Plan shall provide for the replacement and/or augmentation of senior and middle management, as appropriate, with new officers with experience in, and knowledge of, the savings and loan business or related businesses with the attendant commitment to safe and sound banking practices. The Management Plan shall specifically address the means by which the Institution intends to hire a Chief Executive Officer, Chief Financial Officer and Senior Lending Officer. Realistic time frames for the accomplishment of these hirings shall be included

in the Management Plan. The Management Plan shall also contain an organizational chart of the proposed management of the Institution, including the identity of all officers and employees, a description of their respective responsibilities, and the specific qualification of each of the proposed officers. The Management Plan, before being implemented, shall be subject to the review and approval of the Regional Deputy Director.

17. The directors shall cause First Savings to comply, and the Institution shall comply, in all respects with Sections 563.37 and 571.21 of the OTS Regulations, 12 C.F.R. §§ 563.37 and 571.21 (1990) to ensure the judicial recognition of the separate corporate existence of any service corporation. Furthermore, the Institution must develop an organizational structure that shall clearly define and delineate job accountabilities, functional responsibilities, communication channels, reporting lines of authority, and approval levels at each service corporation. No later than ninety (90) days after the issuance of this Order, the Board shall certify in writing to the Regional Deputy Director that an adequate organizational structure to ensure the judicial recognition of the separate corporate existence of the service corporation has been implemented.

VI. Loans-To-One-Borrower

18. The directors shall cause First Savings to comply, and the Institution shall comply, in all respects with the limitations on loans-to-one-borrower, and the maintenance of adequate records

for multiple borrowers, as set forth in 12 C.F.R. Section 563.93 and the Board of Directors shall develop and implement such procedures as necessary to ensure compliance therein. Within sixty (60) days of the date of this Order, the Institution shall prepare and provide to the Regional Deputy Director, a listing of all loans presently in excess of the lending limitations set forth in OTS Regulation 563.93(c). The Institution shall immediately commence best efforts to dispose of any and all loans within its portfolio in excess of 12 C.F.R. 563.93(c).

Additionally, the directors shall cause First Savings to submit, and the Institution shall submit, a plan to the Regional Deputy Director within seventy-five (75) days of this Order setting forth the steps to be taken to bring each nonconforming loan into compliance with the loans-to-one-borrower limitation. The plan shall include the proposed dates when each presently nonconforming loan will attain compliance with 12 C.F.R. 563.93(c) and the specific actions which are to be taken to bring each loan into compliance. On a quarterly basis thereafter, the Institution shall submit a report to the Regional Deputy Director detailing the Institution's efforts to bring all loans into compliance with the loans-to-one-borrower limitation and the status of each loan compared to the Institution's compliance plan.

VII. Investments

19. The directors shall cause First Savings to comply, and the Institution shall comply, in all respects with the limitations

on investment in unrated government obligations as set forth in 12 C.F.R. Section 545.72 and the Board of Directors shall develop and implement such procedures as necessary to ensure compliance therein. The Institution shall immediately commence best efforts to dispose of any and all unrated industrial revenue bonds. Additionally, the directors shall cause First Savings to submit, and the Institution shall submit, a plan to the Regional Deputy Director within sixty (60) days of this Order setting forth the steps to be taken to bring the Institution's investment in industrial revenue bonds into compliance with regulation.

20. The directors shall cause First Savings to comply, and the Institution shall comply, in all respects with the limitations on investment in nonresidential loans set forth in 12 C.F.R. Section 545.35(d). Within sixty (60) days of the date of this Order, the Institution shall submit to the Regional Deputy Director a plan to bring the level of nonresidential real estate loans into compliance with OTS regulation 545.35(d). Such plan shall include a projected definitive compliance date for all loans in addition to interim goals with specific dates.

VIII. Capital Plan

21. The directors shall cause First Savings to formulate, and the Institution shall formulate, a capital plan in accordance with OTS Thrift Bulletin 36a that explains in detail the proposed strategies for raising capital and for accomplishing the overall objectives of the Institution. The capital plan shall include an

analysis of the available strategies and a written summary as to why selected strategies are chosen. The capital plan shall be submitted to the Regional Deputy Director no later than June 12, 1991. The capital plan must be acceptable to the Regional Deputy Director. Any revisions to the capital plan shall be submitted to the Regional Deputy Director within fourteen days from the date the Institution is notified the capital plan is not acceptable, or on the date agreed to by the Regional Deputy Director.

IX. Growth

22. From and after the effective date of this Order, First Savings and any of its subsidiaries or service corporations, shall not, without the prior written approval of the Regional Deputy Director of OTS, increase the total asset size of the Institution.

X. General Provisions

23. The Board of Directors shall ensure that the President of First Savings prepares a monthly compliance report for review by the directorate at each regularly scheduled Board meeting. This report shall detail the Institution's compliance with the terms of this Order. The President shall present this report in its entirety to the Directorate at each regularly scheduled meeting. The Board shall also ensure that the President's report is entered into the minutes of each meeting, and that the Regional Deputy Director is provided with an approved copy of the subject minutes no later than ten (10) business days following the end of

each Board meeting at which time said minutes were approved. Each official minute book copy of the minutes of the Board's meetings shall be signed and dated by each Director.

24. No later than the final day of each calendar month, the Board of Directors of the Institution shall file with the Regional Deputy Director a resolution, similar to the attached resolution, signed by each Director, certifying that the Institution has complied with all conditions of this Order.

25. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

26. Nothing in this Order shall be construed as allowing the Institution to violate any law or regulation to which it is subject.

27. Upon the execution of this Order, the Supervisory Agreement dated June 13, 1990 is hereby terminated.

28. This Order shall remain in effect until terminated by the OTS.

OFFICE OF THRIFT SUPERVISION

/S/

Billy C. Wood
Regional Director
Midwest Region

RESOLUTION

WHEREAS, the Board of Directors of First Savings Bank, a Federal Savings Bank, Manhattan, Kansas has been required to make certain certifications regarding the activities as outlined in the Order to Cease and Desist dated _____, 1991, and

WHEREAS, the Board of Directors has reviewed certain activities and transactions with the senior officers of the Institution occurring during the month of _____, 1991;

NOW, THEREFORE, BE IT RESOLVED, that based upon reports and information provided to the undersigned directors by the senior officers of the Institution, the undersigned members of the Board of Directors hereby certify that, to the best of our knowledge and belief, First Savings Bank, a Federal Savings Bank has complied with all conditions of the Order to Cease and Desist during the month of _____, 19__.

DATE: _____