

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
THOMAS G. CHILDRESS)
)
Former Director and)
Institution Affiliated Party)
of:)
)
American Federal Bank, a)
Federal Savings Bank,)
Ada, Oklahoma)
)

Re: Resolution No. TOP-91-24

Dated: August 6, 1991

STIPULATION AND CONSENT TO ISSUANCE OF ORDER TO CEASE AND
DESIST FOR RESTITUTION AND OTHER AFFIRMATIVE RELIEF

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, and Thomas G. Childress ("Childress"), a former Director of American Federal Bank, a Federal Savings Bank, Ada, Oklahoma, hereby 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 Childress, pursuant to Section 407(g) of the National Housing Act of 1934 ("HOLA"), 12 U.S.C. § 1730(e), and Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

("FIRREA"), 12 U.S.C. § 1818(b) (1988 and Supp. I 1989). Childress desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying the statements, conclusions or terms herein, Childress hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating administrative cease and desist litigation on the subjects covered in the attached Order. Childress, without trial, presentation of any evidence, or findings of fact pursuant to an administrative judicial hearing, has consented to the terms of the Stipulation for the sole purpose of resolving the issues in this proceeding without significant legal cost and expense. The OTS has determined that it is appropriate, and in the best interest of the public to execute the Stipulation and the attached Order to Cease and Desist for Restitution and Other Affirmative Relief ("Order"). This Stipulation and the attached Order are issued solely to settle the matters covered in the Order, and are not the result of factual findings.

2. Jurisdiction. The OTS is of the opinion that:

(a) The Institution at all times relevant to the allegations set forth herein, was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act of 1933, as amended by Section 301 of FIRREA, 12 U.S.C. § 1462(4). Accordingly, it was an "insured depository institution" as that term is defined in

Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(c).

(b) Until August 9, 1989, the accounts of the Institution were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") pursuant to Section 403(b) of the NHA, 12 U.S.C. § 1726(b), by reason of which it was an "insured institution" within the meaning of the NHA.

(c) As of August 9, 1989, pursuant to the provisions of FIRREA, the insurance of the accounts of the Institution was transferred to the Federal Deposit Insurance Corporation.

(d) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB"), as operating head of the FSLIC, was the regulatory agency with jurisdiction over the Institution and persons participating in the conduct of its affairs, including Childress, pursuant to Sections 403 and 407 of the NHA, 12 U.S.C. §§ 1726 and 1730.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of FIRREA, 12 U.S.C. § 1813(q), the OTS succeeded to the interests of the FHLBB with respect to the supervision and regulation of all savings associations, and thus became the "appropriate Federal banking agency" with jurisdiction over the Institution and persons participating in the conduct of the affairs thereof.

(f) The Director of the OTS has the authority to bring administrative cease and desist proceedings directing affirmative

relief against persons participating in the conduct of the affairs of the Institution and institution-affiliated parties, pursuant to Section 5(d)(1)(A) of the HOLA, as amended by Section 301 of the FIRREA, 12 U.S.C. § 1464(d)(1)(A), and Section 8(b) of the FDIA, as amended by the FIRREA, 12 U.S.C. § 1818(b).

(g) Childress was at all times relevant hereto a Director of the Institution, and; the Chief Executive Officer of Lenders Service Incorporated ("LSI"), a wholly-owned subsidiary of the Institution. Accordingly, Childress is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(u), and as such, is subject to the authority of the OTS to maintain cease and desist proceedings pursuant to Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b).

3. Consent. Without admitting or denying the need or basis therefor, Childress consents to the issuance by the OTS of the Order, a copy of which is attached hereto and incorporated as Exhibit A. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of 12 U.S.C. § 1818(b) and Section 407(e) of the NHA, 12 U.S.C. § 1730(e).

4. Finality. The Order is issued under Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b). Upon its issuance, it shall be a final order, effective and fully

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Re: Resolution No. TOP-91-24

Dated: August 6, 1991

ORDER TO CEASE AND DESIST FOR RESTITUTION
AND OTHER AFFIRMATIVE RELIEF

WHEREAS, Thomas D. Childress ("Childress") has executed a Stipulation and Consent to Issuance of Order to Cease and Desist for Reimbursement and Other Affirmative Relief ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director; and

WHEREAS, without admitting or denying that the grounds exist therefor, Childress has consented and agreed in the Stipulation to the issuance of this Order to Cease and Desist for Reimbursement and Other Affirmative Relief ("Order"), pursuant to Section 8(b) of the Federal Deposit Insurance Act, as amended by the Financial

Institutions Reform, Recovery and Enforcement Act of 1989, ("FIRREA"), 12 U.S.C. § 1818(b) (1988 and Supp. I 1989);

NOW THEREFORE, IT IS ORDERED that:

1. Within thirty (30) days from the effective date of this Order, Childress shall make restitution to American Federal Savings, a Federal Savings Bank, Ada, Oklahoma (the "Institution") in the amount of \$39,700, or such amount which remains due and payable to Lenders Service Incorporated ("LSI") by Boman Plaza, an Oklahoma Partnership (the "Partnership"), whichever is less. This sum represents the unsecured advance made to the Partnership by the Institution in March 1990.

2. Childress shall comply with paragraph 1 of this Order by sending a certified check to the Regional Director of the Midwest Regional Office, in the required amount, payable to the Institution.

3. Within thirty (30) days from the effective date of this Order, Childress shall transfer and convey, by Quit Claim Deed, any and all of his right, title and interest, however denominated, in and to the real property commonly described as the Boman Plaza Building located at 6539 East 31st Street, Tulsa, Oklahoma, and all improvements thereon; all as more fully described on attached Exhibit A.

4. Childress shall indemnify and reimburse the Institution for the unsecured advance made by the Institution in the amount of \$1.5 million to LSI in January 1991 to the extent that any

disbursements of said advance were, directly or indirectly, paid over to or utilized for the benefit of any officer, director or shareholder of the Institution; or any affiliate of Childress or immediate family member of Childress. Within ten (10) days from the date of issuance of this Order, Childress shall execute and deliver the Indemnification and Reimbursement Agreement attached hereto as Exhibit B and incorporated herein by this reference.

5. Nothing contained in this Order shall be interpreted to prohibit Childress from responding in any manner to any charges, inquiries or other contacts initiated by the OTS and/or by any other regulatory agency concerning Childress.

6. 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, FDIA, or the Home Owners' Loan Act ("HOLA"), 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, FDIA, or HOLA, shall have meanings that accord with their best custom and usage in the savings and loan industry.

7. The terms and provisions of this Order shall be binding

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

The following real estate, situated in the County of Tulsa, State of Oklahoma, to-wit:

TRACT 1: Beginning at a point 849.5 feet East of the Southwest Corner of the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section 14, Township 19 North, Range 13 East, Tulsa County, Oklahoma, thence due North a distance of 308.31 feet to a point on the South line of Section 14, thence East along the South line of Section 14, a distance of 100 feet to the point of beginning, less all road right-of-way thereof.

TRACT 2: All of Block Three (3), South Sheridan Acres Extended Addition, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

EXHIBIT B

INDEMNIFICATION AND REIMBURSEMENT AGREEMENT

This Indemnification and Reimbursement Agreement ("Agreement") is entered into this _____ day of July, 1991, by and between Thomas G. Childress ("Childress") and American Savings Bank, a Federal Savings Bank, Ada, Oklahoma (the "Institution"), collectively called the Parties.

WHEREAS, Childress executed a Stipulation and Consent to Issuance of Order to Cease and Desist ("Stipulation") stipulating and consenting to the issuance of an Order to Cease and Desist ("Order"); and

WHEREAS, pursuant to Paragraph No. 3 of the Order, Childress is required to enter into an agreement to indemnify and reimburse the Institution for certain losses and expenses more fully set forth therein and herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. REIMBURSEMENT AND INDEMNIFICATION BY CHILDRESS.

Childress agrees to reimburse the Institution, and/or its wholly-owned service corporation, Lenders Service Incorporated ("LSI"), for any and all disbursements of monies made from the \$1.5 million advance by the Institution to LSI, to the extent that any disbursements of said advance were, directly or indirectly, paid over to or utilized for the benefit of any officer, director or shareholder of the Institution; or any affiliate of Childress

or immediate family member of Childress. Childress further agrees to indemnify and hold harmless the Institution and LSI against any liabilities, losses and damages recognized, and costs and expenses incurred (including legal fees) resulting from said disbursements.

The indemnification obligations provided for herein shall apply whether or not the basis of the liability, loss, damage, cost or expense occurred before or after the execution of this Agreement. Additionally, this Agreement and the indemnity provided for herein, shall remain in full force and effect, irrespective of whether the liability, loss, damage, cost or expense indemnified resulted from actions taken or omitted in either good or bad faith or whether such actions or omissions were unlawful.

2. **PROOF REQUIRED FOR REIMBURSEMENT.** In the event any disbursement made from the \$1.5 million advance is determined to have been directly or indirectly paid over to, or utilized for the benefit of, any person or entity outlined in Paragraph No. 1 above an itemized statement thereof, sworn to by an officer or officers of the Institution, shall be prima facie evidence of the fact and extent of Childress' liability hereunder. Within seven (7) days following receipt of any such itemized statement, Childress shall remit the full amount set forth in the itemized statement, in cash or certified check, to the Institution.

3. **PROOF REQUIRED FOR INDEMNIFICATION.** In the event any liability, loss, damage, cost or expense is recognized or

incurred by the Institution or LSI as a result of any disbursements of the \$1.5 million advance as outlined above, an itemized statement thereof, sworn to by an officer or officers of the Institution, shall be prima facie evidence of the fact and extent of Childress' indemnification obligation hereunder. Within seven (7) days following receipt of any such itemized statement, Childress shall remit the full amount set forth in the itemized statement, in cash or certified check, to the Institution.

4. **DEFINITIONS.** All capitalized terms and names used herein, and not otherwise defined, shall have the meaning as set forth in the Order.

5. **GOVERNING LAW.** This Reimbursement and Indemnity Agreement shall be construed in accordance with the laws of the State of Oklahoma and of the United States. In the event of any conflict between the laws of the State of Oklahoma and the laws of the United States, the laws of the United States shall control.

6. **SUCCESSORS.** This Agreement shall be binding upon and inure to the benefit of any successor, by merger, acquisition of assets, conservator, receiver, trustee in bankruptcy or otherwise, to either of the Parties hereto.

7. **TERMINATION.** The Parties hereto agree that this Agreement shall remain in full force and effect for a period of five years from the date first above written.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and year first above written.

 / S /

Thomas G. Childress

AMERICAN SAVINGS BANK, A FEDERAL SAVINGS
BANK, ADA, OKLAHOMA

By: _____

Its: _____