

95276

AGREEMENT

This Agreement is made and is effective this 4 day of August, 1989 by and between First Savings and Loan Association of Central Indiana, Anderson, Indiana, FHLBB No. 0004 ("Institution") and the Federal Savings and Loan Insurance Corporation ("FSLIC"), which is under the direction of the Federal Home Loan Bank Board ("FHLBB").

WHEREAS, the board of directors of the Institution has reviewed the operations and financial condition of the Institution and finds that the present condition of the Institution justifies and requires extraordinary action by the directors of the Institution for the benefit of the Institution and its depositors, other creditors, and borrowers; and

WHEREAS, the Institution submitted to the FHLBB on September 12, 1988 an application for voluntary supervisory conversion (the "Application") which the FHLBB denied on May 23, 1989; and

WHEREAS, the Institution filed a request for reconsideration of the application with the FHLBB on June 13, 1989; and

WHEREAS, the FHLBB and the FSLIC acknowledge that the Institution has diligently pursued and continues to pursue a plan to recapitalize the Institution on an unassisted basis; and

WHEREAS, the Institution's board of directors acknowledges the interest of the FSLIC, as the insurer of the savings accounts of the Institution, in the future condition of the Institution, and the supervisory rights, powers, and authority of the FHLBB, as the operating head of the FSLIC, with respect to the Institution under the statutes and regulations that govern the operations of the Institution; and

WHEREAS, the Institution's board of directors acknowledges that grounds exist for the appointment of a conservator or receiver or other legal custodian for the Institution by the FHLBB pursuant to Section 406 of the National Housing Act, as amended ["NHA"], 12 U.S.C. Section 1729 (1982), and that one or more grounds specified in Section 5(d)(6)(A)(i), (ii) or (iii) of the Home Owners' Loan Act of 1933, as amended ["HOLA"], 12 U.S.C. Section 1464(d)(6)(A)(i), (ii) or (iii) (1982), exist with respect to the Institution; and

WHEREAS, the FSLIC is of the opinion that the Institution has not complied with Section 563.13 of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation ("Insurance Regulations"), 12 C.F.R. Section 563.13 (1988), or as amended, thereby providing grounds for the initiation of cease and desist proceedings against the Institution by the FSLIC; and

WHEREAS, in the interest of regulatory compliance and cooperation, the Institution is willing to enter into this Agreement to avoid the initiation of such cease and desist proceedings; and

WHEREAS, the FSLIC is willing to forbear at this time from the initiation of cease and desist proceedings as the result of the Institution's failure to meet its regulatory capital requirement in accordance with Section 563.13 of the Insurance Regulations, 12 C.F.R. Section 563.13 (1988), or as amended, as

long as the Institution is in compliance with the provisions of this Agreement;

NOW THEREFORE, in consideration of the FHLBB's above-stated forbearance, it is agreed between the parties hereto as follows:

1. The Institution and its directors by this Agreement consent to the appointment of a conservator or receiver or other legal custodian for the Institution by the FHLBB, provided such appointment is permissible under the National Housing Act, as amended.

OPERATING PROVISIONS

2. Except for existing legally binding commitments and investments that qualify as liquid assets under 12 C.F.R. Section 523.10 (1988) (excluding mutual fund investments pursuant to 12 C.F.R. Section 545.76), without prior written approval of the Supervisory Agent ("Agent") at the Federal Home Loan Bank of Indianapolis, the Institution shall not, and shall not after the date of the Agreement allow any wholly-owned or majority owned subsidiary or affiliate of the Institution to:
 - (a) engage in forward commitments as defined in 12 C.F.R. Section 563.17-3 (1988);
 - (b) engage in futures transactions, or financial options transactions as defined in 12 C.F.R. Sections 563.17-4 and 563.17-5 (1988);
 - (c) make, invest in, or purchase or commit to invest in or purchase, refinance, or commit to be refinanced, or otherwise modify any loans secured by real estate or participations therein (including any commercial or acquisition development loans) or any real estate investments, or any set of such loans, participations, or investments, except home equity lines of credit classified as consumer credit pursuant to 12 C.F.R. Section 561.38 (1988) and home loans or refinancings made at current market interest rates and terms to finance bona fide purchases of existing 1-4 family residences located in Indiana (or the construction of single family residences secured by a first lien on such residences); for purposes of this Paragraph 12, 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 single persons, entities, or institutions acting together in a single transaction;
 - (d) invest in or purchase or commit to invest in any interest only, principal only, or other mortgage derivative product;
 - (e) enter into any single transaction or group of transactions of a similar nature, to invest, purchase, or to commit to invest or purchase, any mortgage-backed security or bond which in the aggregate exceeds \$4.0 million, except for federal funds;
 - (f) sell, pledge, or exchange any loan secured by real estate or, participation therein or real estate investment, security, or other asset, or any set of such loans, participations, real estate investments, securities, or other assets where the aggregate loss is in excess of \$50,000 per transaction;

- (g) make, purchase, refinance or sell, or commit to make, purchase, refinance or sell commercial loans; issue or commit to issue commercial letters of credit; or invest in or commit to invest in corporate debt securities;
- (h) make, invest in, purchase, or refinance, or commit to make, invest in, purchase, or refinance any
 - consumer loan, education loan or parcel of real estate owned in excess of \$25,000 per loan or parcel,
 - home equity or home improvement loans in excess of \$75,000, provided that the Institution holds a first mortgage lien on the property, or
 - mortgage loans secured by 1-4 family residences or construction loans secured by a first lien on single family residences in excess of \$200,000;
- (i) borrow any money, other than reverse repurchase agreements as defined by 12 C.F.R. Section 571.16 (1988) up to a maximum of \$35,000,000 outstanding at any time;
- (j) amend, defease, assign, pledge, hypothecate or otherwise retire any debt (including subordinated debt) prior to maturity;
- (k) enter into any lease or contract for the purchase or sale of real estate or of any interest therein except in the ordinary and usual course of its business, which ordinary course of business includes leasing of empty branch space, dealing with the work-out of properties where losses will not exceed \$50,000 per transaction, or the entering into mortgage warehouse arrangements with wholly-owned or majority-owned subsidiaries (excluding mortgage warehouse arrangements with third parties);
- (l) encumber any of its property or other assets, except as security for advances from a Federal Home Loan Bank;
- (m) enter into any contract or any agreement for the purchase, sale, or lease of goods, materials, equipment, supplies, services or capital assets where such contracts or renewals exceed \$100,000 per calendar year;
- (n) incur any material obligation, liability, or contingent liability, except in the ordinary and usual course of its business, which is in excess of \$100,000 per obligation or liability;
- (o) enter into any joint venture agreements;
- (p) except for individual merit increases in accordance with its standard personnel policy adopted prior to the effective date of this Agreement and normal periodic employee salary and wage increases scheduled prior to the effective date of this Agreement and that comply with 12 C.F.R. Section 563.17 (1988) and FHLBB Memorandum R42, make or agree to make any additional increase in the rate of compensation on an annual basis to any of its directors, officers, employees, agents, or other representatives;

- (q) employ or appoint any person to serve as an officer, director, or senior manager who is not so employed or appointed as of the effective date of this Agreement; employ any person at a rate of compensation which, on an annualized basis, exceeds \$50,000 per year; employ any person pursuant to a contract that provides salary and any other benefits in excess of \$50,000 per year; or amend or renew any employment contract, collective bargaining agreements, pension or profit sharing, bonus, severance pay, retirement, fringe benefit, life insurance, health insurance or other employee benefit plans; (All employment contracts must comply with 12 C.F.R. Section 563.39 (1988).);
 - (r) enter into, renew or revise any contractual arrangement with any controlling person, affiliate, subsidiary or attorney or agent for or of the Institution or any of its subsidiaries; except in the ordinary or usual course of its business;
 - (s) amend or permit to be amended its charter or bylaws except as directed by the Agent;
 - (t) make any material change in accounting method except as required by regulation or Generally Accepted Accounting Principles (GAAP);
 - (u) invest in any service corporation or any subsidiary thereof or finance subsidiary;
 - (v) enter into any agreement to merge, consolidate, or otherwise be acquired, or to reorganize or for management services, except in connection with a Plan of Combination or Reorganization or a Management Services Contract recommended by the FSLIC or its Agent;
 - (w) enter into any material transaction other than in the ordinary and usual course of business;
 - (x) invest in, or purchase, or commit to purchase loan servicing rights separate from the loans.
- 2.2 The Agent, in his/her sole discretion may, with 10 days advance written notice to the Institution, amend, modify, or suspend any of the operating provisions of Paragraph 2.1.
3. Uninsured Deposits. The Institution shall use its best efforts not to accept or renew any uninsured deposits. The Institution will develop a training program to instruct its employees on how to structure accounts and counsel consumers to ensure all accounts are FSLIC-insured. The Institution shall submit a written report to the Agent on a monthly basis by the 20th of the month. The written report is to include the number, dollar amount, and maturity dates of accounts having principal or interest uninsured with a trend analysis showing the reduction or cessation of uninsured deposits.
4. Growth. The Institution shall not, without the prior written approval of the Agent, increase its total liabilities in any quarter by an amount in excess of the amount of interest credited on deposits during the quarter and the amount necessary to fund during the quarter any legally binding commitments existing as of the date of this Agreement. To obtain such

pre-approval, the Institution must submit a written growth application in accordance with the documentation requirements of 12 C.F.R. 563.13-1 (1988) and Regulatory Bulletin 3a.

5. Asset Classification. The Institution shall submit a written status report on assets classified and valuation allowances established in accordance with 12 C.F.R. Sections 561.16c, 571.1a, Thrift Bulletin 3 and Regulatory Bulletin 6 to the Agent, on a quarterly basis, by the 20th of January, April, July and October.
6. Financial Reporting. The Institution shall file all financial reports required by the FSLIC including monthly and quarterly reports on the required date and such other reports requested by the Agent on the requested date.
7. Board Minutes. A certified copy of the minutes of each board of directors' meeting will be furnished to the Agent immediately after such minutes are approved. Said minutes shall in all cases be submitted (with or without board approval) to the Agent within 35 days of the board meeting. If board approval is not obtained for the submission, a written explanation must be submitted to the Agent.
8. Additional Reporting. The Institution shall, upon request, furnish the Agent with such written reports from the Institution that are deemed necessary by the Agent to assure compliance with this Agreement.
9. Settlement-Arbitration Procedures. The Institution shall not initiate any litigation against any FSLIC insured institution for which the FSLIC has been appointed receiver or conservator, or that is operating under the Management Consignment Program, or that is subject to the terms of a consent resolution, supervisory agreement, cease and desist order, or other similar supervisory controls. In the event of a dispute between the Institution and an institution for which the FSLIC has been appointed receiver, the Institution shall present its claim to the receiver pursuant to the procedures set forth at 12 C.F.R. Section 575a (54 Federal Register 12414, March 22, 1989). If dissatisfied with the decision of the receiver, the Institution may appeal the matter to the FHLBB, whose decision the Institution shall accept.

In the event of a dispute between the Institution and any other institution(s) in the above-described categories, the business decision-makers of each institution are to first pursue good faith efforts toward a negotiated settlement of the dispute. If the institutions are unable to reach a negotiated settlement, the Institution hereby agrees to submit the dispute for binding arbitration pursuant to the Rules of the FSLIC Arbitration Program, as such Rules exist at the time the Arbitration is commenced, and to sign an agreement to arbitrate in the form set out below:

We, the undersigned parties, hereby agree to submit to arbitration under the Rules of the Federal Savings and Loan Insurance Corporation Arbitration Program, which are hereby incorporated into this agreement, the following controversy: (cite briefly). We further agree that the above controversy be submitted to the Arbitrator(s) selected from the American Arbitration Institution's National panel of Arbitrators. We

further agree that we will faithfully observe this agreement and the Rules; that we will, without delay, comply with any and all Orders and decisions of the Arbitrator(s); and that we will abide by and perform any award rendered by the Arbitrator(s); that we will accept the award as a final resolution of the controversy; that we will not challenge or contest the award; and, that a judgment of a Court having jurisdiction may be immediately entered upon the award and executed.

The institution further agrees that it will accept the arbitration award as a final resolution of the dispute, that it will not challenge or contest the award, and that it will consent to enforcement of the judgment in any federal or state court having jurisdiction over the parties or subject matter of the dispute.

BOARD OF DIRECTORS AND
MARKETING PROVISIONS

10. The provisions of paragraphs 11 through 20 of this Agreement shall become effective and enforceable on September 15, 1989. Nothing in this paragraph shall either amend Paragraph 1 of this Agreement or restrict the authority of the FHLBB to appoint a conservator or receiver or other legal custodian for the institution prior to the effective date of paragraphs 11 through 20 of this Agreement.
11. The directors of the Institution hereby resolve and agree to resign from the board (or to require officers or employees to resign) at the request of the FSLIC represented by the Agent at the Federal Home Loan Bank of Indianapolis, at such time and in such order as the Agent shall request. Nothing herein requires any director to serve for any period of time.
12. The directors of the Institution expressly acknowledge that wholly-owned subsidiaries of the Institution are totally controlled by the Institution. Any fundamental changes to the operation of any wholly-owned subsidiary, including the appointment of any director or senior management, or the direct or indirect sale, lease, or pledge of wholly-owned subsidiary assets requires the pre-approval of the Agent. The directors of the Institution who are directors of a wholly-owned or majority-owned subsidiary of the Institution hereby resolve and agree to resign from the board (or to require officers or employees to resign) of any such subsidiary at the request of the Agent, at such time and in such order as the Agent shall request. Nothing herein requires any director to serve for any period of time.
13. The Secretary or an acting Secretary to the Institution resolves and agrees to request, upon the request of the Agent, the resignation of any or all of the directors of any wholly-owned or majority owned subsidiary of the Institution.
14. The board of directors of the Institution and each director of the Institution resolves and agrees to fill any vacancy in the directorate of the Institution by electing as director a person recommended by the Agent; and the Institution's board of directors shall take under consideration any such recommendation by the Agent and take immediate action thereon.

15. The board of directors shall take any steps necessary to amend the bylaws of the Institution to provide for such number of directors as the Agent shall recommend or to effect the election of any person to the board who is recommended by the Agent.
16. The FSLIC, represented by the Agent, is hereby authorized to negotiate a plan of merger, consolidation, transfer of the Institution's assets and liabilities, reorganization, or acquisition of, or capital infusion for, the Institution ("Plan of Combination or Reorganization") and/or Management Services Agreement, and to draft proposed documents for any such Plan of Combination or Reorganization and/or Management Services Agreement.
17. The board of directors immediately shall take under consideration any Management Services Agreement and/or Plan of Combination or Reorganization that is forwarded and recommended to the board of directors by the Agent, and shall promptly approve any such Management Services Agreement and/or Plan of Combination or Reorganization under which the interests of the depositors, other creditors, and borrowers of the Institution are protected.
18. The board of directors shall recommend to the members of the Institution any Management Services Agreement and/or Plan of Combination or Reorganization approved by the board of directors pursuant to Paragraph 17 of this Agreement, if approval by the members or a portion thereof is necessary to effect such plan.
19. The Institution shall, at the direction of the FSLIC, take all corporate actions necessary to effect a Plan of Combination or Reorganization approved by the FSLIC and/or shall, at the direction of the FSLIC, provide for the management of its day-to-day operations in accordance with a Management Services Agreement approved by the FSLIC; and the Agent may execute on behalf of the Institution any necessary documents effecting such Management Services Agreement and/or Plan of Combination or Reorganization.
20. The books and records of the Institution and of any wholly-owned or majority owned subsidiary of the Institution, upon the request of the Agent, shall be made available to the representatives of any institution, person, or entity negotiating with the FSLIC concerning a Management Services Agreement and/or a Plan of Combination or Reorganization, subject to normal FSLIC confidentiality undertakings.

ADDITIONAL PROVISIONS

All technical words or terms used in this Agreement, for which meanings are not specified or otherwise provided by the provisions of this Agreement, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, and any such technical words or terms used in this Agreement and undefined in said Code of Federal Regulations shall have meanings that accord with the best custom and usage in the savings and loan industry.

This Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Institution. It is understood and agreed that this Agreement is a "written agreement entered into with the Corporation" as that phrase is used in Section 407(e) of the National Housing Act (12 U.S.C. Section 1730(e) (1982)).

The Federal Home Loan Bank of Indianapolis is not a party to this Agreement, and the Bank assumes no direct or indirect legal duty or obligation arising from this Agreement.

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

This Agreement shall remain in effect until terminated or suspended by the FSLIC, acting through its Agent at the Federal Home Loan Bank of Indianapolis, or its successor federal regulatory authority. Such Agent may suspend or modify in his/her sole discretion any or all provisions of this Agreement during the term of a Management Services Agreement executed pursuant to this Agreement.

For the purposes of facilitating the execution of this Agreement, the Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which counterparts shall constitute but one and the same instrument.

CERTIFIED COPY OF
RESOLUTION OF BOARD OF DIRECTORS

I, the undersigned, being the duly qualified Secretary of First Savings and Loan Association of Central Indiana certify that the following is a true copy of a resolution duly adopted by its Board of Directors at a meeting duly called and held on August 4, 1987, that at said meeting a quorum was present and voting throughout, and that said resolution has not been rescinded or modified and is now in full force and effect:

RESOLUTION

WHEREAS, said officers and directors have been informed that the Federal Savings and Loan Insurance Corporation will forebear from the initiation of formal enforcement proceedings on the subjects covered by the attached Agreement ("Agreement") if it is executed by the Institution and if its terms are thereafter carried out by the Institution, and

WHEREAS, the directors of First Savings and Loan Association of Central Indiana have read and considered the proposed Agreement attached to the minutes of the meeting of the Board of Directors held on August 4, 1987, and after due consideration, and in the interest of regulatory compliance and cooperation, have determined to enter into the proposed Agreement:

NOW, THEREFORE, BE IT RESOLVED, that the proposed Agreement, a copy of which is attached hereto, be and is hereby approved by the Board of Directors of First Savings and Loan Association of Central Indiana. The officers and employees of First Savings and Loan Association of Central Indiana are directed and authorized to take all necessary steps to implement immediately the terms of the Agreement.

IN WITNESS THEREOF, I have hereto subscribed my name and affixed the seal of First Savings and Loan Association of Central Indiana, this 4 day of August, 1987.

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Secretary

DIRECTORS' WAIVER OF NOTICE

I hereby waive notice of the meeting of the Board of Directors of First Savings Association,
August 4, 1989, held in Anderson, Indiana, Central Indiana
at which the Board of Directors considered and adopted the attached
resolution concerning the Agreement entered into between the Institution and
the Federal Savings and Loan Insurance Corporation.

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Robert W. Shoemaker, Jr.
Chairman of the Board

4 August 1989
(Date)

151
George K. Allison
President and Director

Aug. 4, 1989
(Date)

151
Thomas R. McMahan
Director

8/4/89
(Date)

151
William E. Schofield
Director

8/4/89
(Date)

151
Edward Wellington
Director

August 4, 1989
(Date)

151
Rex Wischert, Jr.
Director

Aug 4, 1989
(Date)

151
G. Eugene Yates
Director

August 4, 1989
(Date)