

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
 )  
SECURITY SAVINGS BANK, F.S.B. )  
Jackson, Michigan )  
 )

Re: Resolution No. IND 91-9  
Dated: September 19, 1991

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 Central Region, OTS, and Security Savings Bank, F.S.B., Jackson, Michigan (the "Savings 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 the Savings Association pursuant to Section 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, 12 U.S.C. 1818(b) ("FIRREA"). The Savings Association 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 the Savings Association with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) The Savings Association 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), as amended by FIRREA.

(b) Pursuant to Section 3 of the FDIA, as amended by FIRREA, the OTS is the "appropriate Federal Banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, the Savings 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), as amended by FIRREA.

3. Consent. The Savings Association consents to the issuance by the OTS of the Order. It 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 National Housing Act, 12 U.S.C. 1730(e).

4. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. 1818(b), as amended by FIRREA. Upon its issuance by the Regional Director for the Central Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. 1818(i), as amended by FIRREA.

5. Waivers. The Savings Association waives its right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. 1818(b), as amended by FIRREA, and further waives any right to seek judicial review of the initial issuance of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. 1818(h), as amended by FIRREA, or otherwise to challenge the validity of the Order. Notwithstanding the foregoing, the Savings Association does not in any way waive its right to seek



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ORDER TO CEASE AND DESIST

WHEREAS, Security Savings Bank, F.S.B., Jackson, Michigan (the "Savings Association"), through its directors, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Central Region; and

WHEREAS, the Savings Association, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("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, Pub. L. No. 101-73, 103 Stat. 183, 12 U.S.C. 1818(b) ("FIRREA"), without admitting or denying any regulatory or statutory violations.

NOW, THEREFORE, IT IS ORDERED that the Savings Association and its directors, officers, employees, agents and service corporations shall not violate or aid and abet any violation of:

1. 12 C.F.R. Section 563.39;
2. 12 C.F.R. Section 563.160;
3. 12 C.F.R. Section 563.161;

4. 12 C.F.R. Section 563.170;
5. 12 C.F.R. Section 563.172; and
6. 12 C.F.R. Section 563.233.

**IT IS FURTHER ORDERED** that:

**BOARD OF DIRECTORS' RESPONSIBILITIES**

1. The Board of Directors shall focus upon adequately directing management so that the goals contained in Board-adopted policies and procedures can be satisfactorily met. The Board of Directors shall enforce its policies and procedures by evaluating in writing, on a semiannual basis, management's progress and performance in implementing them, to the satisfaction of the Board of Directors. This evaluation shall include an organizational chart and identification of management's weaknesses, if any, along with recommendations for improving identified weaknesses. This evaluation shall be filed with the Deputy Regional Director of OTS within sixty (60) days following the date of this Order and thereafter within sixty (60) days after each six (6) month period beginning July 1, 1992.

2. Although the Savings Association is required by this Order to submit certain proposed actions, policies, and procedures for the review or approval of the Deputy Regional Director of the OTS or her designee, the Board of Directors retains the ultimate responsibility for the proper and safe and sound management of the Savings Association. Moreover, the Board of Directors shall actively fulfill its fiduciary duty to ensure that the Savings Association is safely and soundly managed. To this end, the Savings Association's official minutes (including material documentation of the Board of Directors and its established committees) shall clearly reflect the level of decision making and supervision exercised over the Savings Association by the Board of Directors.

3. The Savings Association's Board of Directors shall take all steps necessary to ensure full compliance by the Savings Association with the provisions of this Order and shall monitor and review such compliance on a monthly basis at Board of Directors meetings. Such review shall be fully reflected in the minutes of Board of Directors meetings. A written report reviewing the Savings Association's compliance with this Order signed by all directors shall be submitted to the Deputy Regional Director of OTS by the thirtieth (30th) day of each month.

INTERNAL AUDIT

4. The Savings Association's Board of Directors shall maintain the revised structure of the Audit Committee, as set forth in the Savings Association's examination response letter dated May 2, 1991. The Audit Committee structure shall not be changed without obtaining the prior written approval of the Deputy Regional Director. Minutes of each Audit Committee meeting shall be maintained and reviewed by the full Board of Directors at the next regular Board of Directors meeting following the Audit Committee meeting. The Savings Association shall submit detailed minutes of the Audit Committee meetings to the Deputy Regional Director of OTS in accordance with Section 24 of this Order. The reports submitted by the internal auditor and appropriate responses shall be provided as attachments to the minutes.

5. Within thirty (30) days after the date of this Order, the Savings Association's Board of Directors shall adopt and submit to the Deputy Regional Director of OTS for approval, an amended written Audit Policy revising the policy submitted with the May 2, 1991 examination response. Upon approval by the Deputy Regional Director, the Savings Association shall implement and

comply with the amended Audit Policy. The amended Audit Policy shall set forth the duties and responsibilities of the internal auditor and the Audit Committee and include, at a minimum, provisions requiring:

- a. a statement of the specific objectives of the Audit Committee;
- b. detailed Audit Committee minutes;
- c. attendance of senior management at Audit Committee meetings only upon the request of the Audit Committee for the purpose of responding to questions;
- d. selection of Audit Committee members by the outside directors; and
- e. a specific internal audit plan to be established and approved by the Board of Directors which shall provide a detailed description of audit procedures to be followed and the operational areas to be reviewed, including timetables for the review of each area and the format for reports by the internal auditor.

6. The Board of Directors shall evaluate the effectiveness of the internal audit program on a quarterly basis and shall report to the Deputy Regional Director of OTS, by the thirtieth (30th) day of the month following the end of each quarter, on the quality of the internal audit, compliance with the Audit Policy and the maintenance of the independence of the internal audit function.

#### ACCOUNTING AND CONTROLS

7. Within fifteen (15) days after the date of this Order, the Savings Association shall provide journal vouchers and a certification of the Board of

Directors to the Deputy Regional Director of OTS that the general valuation allowances have been increased to at least the \$470,000 level identified in the July 5, 1990 examination report and that the loss classifications of \$603,965 identified in the July 5, 1990 examination report have been charged off or specifically reserved for.

8. Within ten (10) days after the date of this Order, the Savings Association's Board of Directors shall direct its independent audit firm to submit to the Deputy Regional Director of OTS a report summarizing the scope of the review for the annual audit for the year ended December 31, 1990, the procedures followed in conducting the audit, and their conclusions with respect to the specific accounting concerns raised in the report of examination. This report shall be provided within forty-five (45) days after the date of this Order. After review of this report and any related documents, OTS may require that in conjunction with the audit for the fiscal year ending December 31, 1991, the independent auditors include certain additional procedures to be specified by the Deputy Regional Director of OTS. OTS does not, by entering this Order, waive its authority to require that the Savings Association comply with any reporting requirements to which it is subject.

9. Within thirty (30) days after the date of this Order, revised policies and procedures to guide Savings Association personnel on accounting for restructuring of troubled debt, real estate owned, repossessed assets, accrued interest on delinquent loans, non-performing loans and joint ventures and capitalization of interest, in accordance with generally accepted accounting principles, shall be approved by the Board of Directors and submitted to the Deputy Regional Director of OTS for approval. Upon approval

by the Deputy Regional Director, the Savings Association shall implement and comply with the revised policies and procedures.

10. Within thirty (30) days after the date of this Order, the Savings Association shall submit to the Deputy Regional Director of OTS for approval a revised business plan conforming to format, documentation and variation reporting requirements to be specified by the Deputy Regional Director of OTS. The plan shall provide in detail the specific strategies to be used to improve the net interest margin and overall profitability of the Savings Association. Upon approval by the Deputy Regional Director, the Savings Association shall implement and comply with the business plan. Amendments to the business plan shall be submitted to the Deputy Regional Director for prior approval.

11. The Savings Association shall maintain accounting and other records that provide a complete record of all transactions involving the Savings Association and accurately present its current financial condition under Generally Accepted Accounting Principles (except as the regulations promulgated by OTS permit variation therefrom). The Savings Association's records, internal controls, and reports to the OTS shall comply with all applicable rules and regulations adopted by the OTS and other applicable law, including, but not limited to, 12 C.F.R. Section 563.170 and 15 U.S.C. Section 78m(b)(1982).

12. Within sixty (60) days after receipt of the Deputy Regional Director's comments on the Loan Loss policy previously submitted to OTS under cover of a letter dated July 30, 1991, the Savings Association's Board of Directors shall establish and submit to the Deputy Regional Director of OTS for approval a revised Loan Loss policy. Upon approval by the Deputy Regional Director, the Savings Association shall implement and comply with the amended

policy. Each quarter, the Savings Association shall document and retain in its permanent files, workpapers showing how it determined the allowances for loan losses for that quarter. The Board of Directors shall review and approve the level of allowances for loan losses at each Board of Directors' meeting. This review shall be reflected in the minutes of each meeting. The internal auditor shall establish a program to monitor compliance with these policies and procedures on a quarterly basis. A copy of the documentation to support the level of allowances for loan losses and the internal auditor's quarterly compliance report shall be submitted to the Deputy Regional Director of OTS on the forty-fifth (45th) day after the end of each calendar quarter.

#### ASSET CLASSIFICATION

13. Within sixty (60) days after receipt of the Deputy Regional Director's comments on the Asset Classification policy previously submitted to OTS under cover of a letter dated July 30, 1991, the Savings Association's Board of Directors shall approve and submit to the Deputy Regional Director of OTS for approval a revised Asset Classification policy. Upon approval by the Deputy Regional Director, the Savings Association shall implement and comply with the amended policy.

14. On the fifteenth (15th) day of each month, the Savings Association shall submit to the Deputy Regional Director of OTS a monthly list of all loans delinquent in excess of ninety (90) days and all loans restructured while delinquent or for which interest or principal or both interest and principal have not been paid pursuant to the terms of the obligation.

15. The Savings Association's Board of Directors shall maintain the revised structure of the existing Loan and Problem Loan Committees, as set forth in the May 2, 1991 examination response letter. The names of the committee members shall be set out in the minutes of the Board of Directors.

The duties and role of these committees shall be clearly defined. The minutes of each meeting of these committees shall be detailed and include attendance of committee members. The minutes shall be filed with the Deputy Regional Director in accordance with Section 24 of this Order.

#### COMPENSATION

16. The Savings Association shall immediately amend the employment contracts of Richard Clifton and Alessandro DiNello to:

- a. insert the words "in its discretion" in Section 9.2 of each contract as required by 12 C.F.R. 563.39(b)(2);
- b. require that the Board of Directors specifically review each contract annually to determine if it should be renewed; and
- c. add a savings clause restricting payments to the officers in the event of a Change in Control to an amount that would not trigger the penalty provisions of Section 280G of the Internal Revenue Code.

The amended employment contracts shall be submitted to the Deputy Regional Director of OTS. The Savings Association shall not amend any existing employment contract, except for the purpose of renewing it for one (1) additional year annually, or enter into a new employment contract with any person without obtaining prior written approval of the Deputy Regional Director of OTS.

17. The Savings Association's Board of Directors shall review the compensation and benefits provided to the Savings Association's employees, management and Board of Directors in relation to the Savings Association's needs and financial condition and to other savings associations in the Savings Association's peer group. The proposed peer group for comparison shall be submitted within thirty (30) days of the date of this Order to the Deputy

Regional Director of OTS for prior approval. A written report detailing the results of this review, including any Board of Directors actions, shall be submitted to the Deputy Regional Director within sixty (60) days after the date of this Order.

#### APPRAISALS

18. The Savings Association shall immediately request a written appraisal on the property located at 906 W. Monroe ("Family Services"). The appraisal shall be performed by a qualified income property appraiser and shall conform to industry and regulatory standards. This appraisal report shall be submitted to the Deputy Regional Director of OTS within ten (10) days of receipt by the Savings Association. The Deputy Regional Director of OTS must approve any adjustment to the carrying value of this asset necessitated by the updated appraisal.

19. The Savings Association shall immediately adjust the carrying value of the property underlying the Savings Association's subsidiary investment in Walden Woods Condominium Project if requested to do so by the Deputy Regional Director of OTS, based upon the review of the appraisal report submitted.

20. Within thirty (30) days after the date of this Order, the Savings Association shall submit to the Deputy Regional Director of OTS a complete development plan on the property underlying the Savings Association's subsidiary investment in Timber Meadows Condominium Project which provides for the development and sale of all proposed units in the Project. This plan shall be developed by an independent and qualified person.

#### REPORTING

21. The Savings Association shall disclose the existence and terms of this Order in a Form 8-K to be filed not later than fifteen (15) days after

the date this Order is executed by all parties to this Order, pursuant to the provisions of Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78m(a) and Rule 13a-11 promulgated pursuant thereto, 17 C.F.R. 240.13a-11 (1987).

22. The Savings Association shall file all annual, quarterly and other reports pursuant to the Securities Exchange Act of 1934, 15 U.S.C. 78a - 78jj (1982) ("Exchange Act"), and the rules and regulations promulgated pursuant thereto in an accurate, complete and timely manner.

23. The Savings Association shall file all Thrift Financial Reports pursuant to 12 U.S.C. 1464(5)(v) in an accurate, complete and timely manner.

24. The Savings Association shall provide the Deputy Regional Director of OTS copies of the minutes of all Board of Directors, directors committee and shareholders meetings by the tenth (10th) day after approval of such minutes by the Board or committee, as appropriate, but, in any event, no later than the thirtieth (30th) day of the month following the date of each Board of Directors or committee meeting.

25. The Savings Association and its subsidiaries shall, upon request, furnish the Deputy Regional Director of OTS with such written reports from the Savings Association or its subsidiaries that, in the OTS' opinion, are necessary to assure the OTS of compliance with the terms of this Order. A reasonable time shall be allowed for the production of any such written reports.

26. Failure of the Savings Association to file reports and other documents required hereunder on a timely basis shall not constitute a breach or violation by the Savings Association or any director of this Order, only if such failure is due to causes beyond the control of the Savings Association.

MISCELLANEOUS

27. As used in the Order, the term "Savings Association" shall have the meaning as set forth in Section 2(4) of the Home Owners' Loan Act, as amended ("HOLA").

28. As used in this Order, the term "Deputy Regional Director" shall mean the Deputy Regional Director of the Indianapolis Office of the Central Region of OTS or any other official designated to perform the function by the Regional Director of OTS, or by the Director of OTS or its successor.

29. Reference in this Order to provisions of statutes, regulations, and OTS memoranda shall be deemed to include references to successor provisions, as applicable.

30. 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.

31. Materials required to be sent to the OTS pursuant to this Order shall be mailed to: Deputy Regional Director, Office of Thrift Supervision, 8250 Woodfield Crossing Boulevard, Suite 305, Indianapolis, Indiana 46240.

32. All technical words or terms used in this Order for which meanings are not specified or otherwise provided 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, HOLA, and Federal Deposit Insurance Act, as amended ("FDIA"). Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings in accordance with the best custom and usage in the savings and loan industry.

33. Two (2) years following the date of this Order, and each year thereafter, the OTS shall review the need to continue requiring compliance

