92151210

MEMORANDUM OF APPOINTMENT OF RECEIVER AND TRANSFER AND ASSIGNMENT OF ASSETS

DEPT-01 RECORDING $148.00
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#5747 # A *-92-151210
COOK COUNTY RECORDER

SUBJECT: 762-7429; Benjamin Franklin Federal Savings Association Houston, Texas - In Receivership
APPOINTMENT OF CONSERVATORSHIP/RECEIVERSHIP

1) That on March 8, 1989, the Federal Home Loan Bank Board ("Bank Board"), by Resolution No. 89-710 and 89-713, copies of which are attached as Exhibit "A," appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Benjamin Franklin Savings Association, Houston, Texas ("Association").

2) That on June 28, 1989, FSLIC was appointed sole Receiver for the Association pursuant to Bank Board Resolution No. 89-1668, adopted by the Bank Board on June 28, 1989, with surrender of possession of the Association to FSLIC as Receiver, a copy of which is attached as Exhibit "B."

3) That pursuant to that certain Resolution No. 89-1669, dated June 29, 1989, a copy of which is attached as Exhibit "C", Benjamin Franklin Federal Savings Association, a newly chartered federal mutual savings and loan association, was formed.

4) That pursuant to that certain Acquisition Agreement, dated June 29, 1989, and Resolution No. 89-1668, dated June 28, 1989, copies of which are attached as Exhibit "D" and "B," respectively, FSLIC as Receiver for the Association, transferred, and assigned to Benjamin Franklin Federal Savings Association, substantially all of the assets and certain liabilities of the Association.

5) That pursuant to Resolution Nos. 89-1676 and 89-1679, both dated June 28, 1989, FSLIC was appointed Conservator for Benjamin Franklin Federal Savings Association, with surrender of possession to the FSLIC as Conservator, copies of which are attached as Exhibit "E".

6) That by letter dated June 29, 1989, a copy which is attached as Exhibit "E," FSLIC, as Conservator for Benjamin Franklin Federal Savings Association, requested the Federal Deposit Insurance Corporation ("FDIC") to provide services for the Conservator, and the FDIC accepted said request.

7) The Director, Office of Thrift Supervision ("OTS") appointed the Resolution Trust Corporation ("RTC") as Receiver for Benjamin Franklin Federal Savings Association pursuant to OTS Order No. DAL-91-140, dated September 6, 1991, with surrender of possession of the Benjamin Franklin Federal

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148.00

Savings Association to the RTC as Receiver, by letter dated September 6, 1991, copies of which are attached as Exhibit "F".

EFFECTIVE as of January 31, 1992.

RESOLUTION TRUST CORPORATION, AS RECEIVER OF BENJAMIN FRANKLIN FEDERAL SAVINGS ASSOCIATION

By: _____
Albert E. Magill, III
Attorney-in-Fact

DISTRICT OF COLUMBIA §
§
§

This instrument was acknowledged before me on January 31, 1992, by Albert E. Magill, III, as Attorney-in-Fact for and on behalf of the Resolution Trust Corporation, as Receiver of Benjamin Franklin Federal Savings Association, on behalf of such association.

_____
Notary Public in and for
The District of Columbia
Printed Name: Margaret A Albertson
My Commission Expires: 8/14/96

RETURN TO:

_____
_____
_____

e:\[RTC-Portfolio #12]\010a

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EXHIBIT "A"

004-58-1916

A

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

No. 89-70P

Date: March 8, 1989

Issued Under Delegated Authority

Recitals

WHEREAS, Benjamin Franklin Savings Association, Houston, Texas ("Association"), is an institution incorporated under the laws of the State of Texas, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"); and

WHEREAS, Pursuant to § 406(c)(1)(B) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1729(c)(1)(B) (1982), as amended ("§ 406(c)(1)(B)"), the Federal Home Loan Bank Board ("Bank Board") has exclusive power and jurisdiction to appoint the FSLIC as sole conservator or receiver for an insured institution other than a Federal association in the event the Bank Board determines that any of the grounds specified in § 5(d)(6)(A)(i), (ii), or (iii) of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. § 1464(d)(A)(i), (ii), or (iii) (1982), exists with respect to such insured institution; and

WHEREAS, Pursuant to subsection (ii)(I) of § 406(c)(1)(B), the authority conferred by § 406(c)(1)(B) may be exercised without delay with respect to the Association upon receipt of the written approval of the State official having jurisdiction over the Association that the ground specified by the Bank Board for its exercising such authority exists; and

WHEREAS, Pursuant to subsection (i)(II) of § 406(c)(1)(B), in a case in which the Bank Board has exercised its power and jurisdiction under subsection (i)(I) of § 406(c)(1)(B), the FSLIC shall have the same powers and duties with respect to an insured institution other than a Federal association as are conferred

004-58-1917

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FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

No. 89-210P

upon it under § 406(b) of the NHA, 12 U.S.C. § 1729(b) (1982), as amended, with respect to a Federal association; and

WHEREAS, Pursuant to § 406(c)(3) of the NHA, 12 U.S.C. § 1729(c)(3) (1982), in any case in which the FSLIC is appointed conservator for an insured institution pursuant to § 406(c)(1) of the NHA, 12 U.S.C. § 1729(c)(1) (1982), as amended, the provisions of § 5(d) of the HOLA, 12 U.S.C. § 1464(d) (1982), as amended, shall be applicable in the same manner and to the same extent as if such institution were a Federal association with respect to which the FSLIC had been appointed conservator; and

WHEREAS, Pursuant to Bank Board Resolution No. 89-131, dated February 7, 1989, the Bank Board, the FSLIC and the Federal Deposit Insurance Corporation ("FDIC") entered into a Management Agreement under which the FDIC agreed to provide management services for an insured institution in the event the Bank Board appoints the FSLIC as the sole conservator for such insured institution; and

WHEREAS, The Bank Board has considered staff memoranda together with accompanying attachments and exhibits (copies of which memoranda are in the Minute Exhibit File) and the balance of the administrative record submitted to it:

Ground for Appointment of Conservator

NOW, THEREFORE, IT IS RESOLVED, That on the basis of the administrative record before the Bank Board, the Bank Board finds that the ground for the appointment of a conservator set forth in § 5(d)(6)(A)(i) of the HOLA, 12 U.S.C. § 1464(d)(6)(A)(i) (1982), exists with respect to the Association in that the Association is insolvent in that its assets are less than its obligations to its creditors and others, including its withdrawable accountholders; and

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FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

Notice to State Official

RESOLVED FURTHER, That the Secretary or an Assistant Secretary to the Bank Board, or an agent of the FSLIC, shall cause a letter to be delivered to the Commissioner, Savings and Loan Department, State of Texas ("Commissioner"), notifying the Commissioner of the Bank Board's determination of the existence of the ground specified above for the appointment of the FSLIC as sole conservator for the Association, and requesting written approval of the Commissioner that the ground specified exists, provided that the final form of such letter shall be approved by the Office of the General Counsel ("OGC"); and

Appointment of Conservator

RESOLVED FURTHER, That the Bank Board hereby appoints the FSLIC as sole conservator for the Association ("Conservator"), pursuant to § 406(c)(1)(B) of the NHA, 12 U.S.C. § 1729(c)(1)(B) (1982), provided that the exercise of this appointment shall not be effective, and this appointment shall not be exercised, unless and until an attorney of the OGC, or fee counsel designated by the General Counsel or the designee of the General Counsel to represent the Conservator, or any person named as a Special Representative of the Conservator, or an Assistant Secretary to the Bank Board, shall have received the written approval of the Commissioner that the ground specified in § 5(d)(6)(A)(i) of the HOLA, 12 U.S.C. § 1464(d)(6)(A)(i) (1982), as amended, exists with respect to the Association, and provided further, that the form of any such approval is satisfactory to the OGC; and

RESOLVED FURTHER, That the Conservator need not furnish any bond; and

Powers and Duties of Conservator

RESOLVED FURTHER, That the Conservator is appointed not for the purpose of liquidation, and the Conservator is hereby authorized, pursuant to §§ 406(c)(1)(B)(i)(II) and (c)(3)(A) of the NHA, 12

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FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

U.S.C. §§ 1729(c)(1)(B)(i)(II) and (c)(3)(A) (1982), and § 5(d)(6)(D) of the HOLA, 12 U.S.C. § 1464(d)(6)(D) (1982), to operate the Association in its own name and to conserve the assets of the Association in the manner and to the extent authorized by the Bank Board pursuant to this Resolution and orders and regulations of the Bank Board; and

RESOLVED FURTHER, That the Conservator shall have and exercise all rights, powers, privileges, and immunities and shall assume, perform, and discharge all of the duties and responsibilities of a conservator of a Federal association accorded or imposed by, and subject to, applicable provisions of law, including, but not limited to, § 5(d)(6)(D) of the HOLA, 12 U.S.C. § 1464(d)(6)(D) (1982), § 406 of the NHA, 12 U.S.C. § 1729 (1982), and Parts 547 and 548 of the Rules and Regulations for the Federal Savings and Loan System ("Federal Regulations"), 12 C.F.R. Parts 547 and 548 (1988), as amended; and

RESOLVED FURTHER, That, in addition to and in implementation of such rights, powers, privileges, immunities, and duties as are set forth in Parts 547 and 548 of the Federal Regulations, 12 C.F.R. Parts 547 and 548 (1988), as amended, and orders and resolutions of the Bank Board, the Conservator is authorized and empowered, and need not seek further approval from the Bank Board:

(1) To employ and terminate the services of such assistants and employees under such conditions as the Conservator may deem necessary for the proper administration of the office of Conservator;

(2) To issue orders to all banks, depositories, business entities, or individuals having possession, custody, or control of any property, funds, or assets of the Association not to take any action in connection with, or disburse, remove, transfer, or dispose of such

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FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

property, funds, or assets without written authorization from the Conservator, or from such person(s) as may be authorized to act on behalf of the Conservator;

(3) To stop payment on checks of the Association, permit checks of the Association issued prior to the time the Conservator takes charge of the Association and its affairs to clear through the accounts of the banks on which they were issued, or issue checks in redemption thereof;

(4) To continue existing depository accounts of the Association without the necessity of closing and transferring the same, close out any existing accounts, and establish such new accounts in the name of the Association or in the name of the Conservator as the operations of the Association may require and as the Conservator may deem necessary;

(5) To retain or to open accounts in the Federal Home Loan Bank of Dallas ("Bank"), and to obtain secured or unsecured advances from the Bank; and to execute and deliver such notes and other evidences of indebtedness and security and such other instruments as may be necessary or appropriate in connection therewith;

(6) To obtain loans or advances from the FSLIC in its corporate capacity, and to execute and deliver such notes and other evidences of indebtedness and security, or such other instruments as may be necessary or appropriate in connection therewith;

(7) To honor loan commitments and other contracts under which the Association is obligated to make disbursements, and to make such loans and incur other obligations, within the limitations provided by the Charter of the Association and applicable law and regulations,

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

for the purposes of preserving, protecting, or salvaging the interests of the Association;

(8) To settle and release claims for deficiency judgments, accept deeds in lieu of foreclosure, and enter into other similar settlements and releases for the purpose of obtaining marketable title to assets;

(9) To settle, release, or obtain release of, for cash or other consideration, claims and demands against, or in favor of, the Association or the Conservator other than claims and demands of the type described in paragraph (8) above;

(10) To sell or otherwise dispose of any mortgage, deed of trust, chose in action, bond, note, contract, judgment, or decree, or share or certificate of share of stock or debt owing to the Association, in whole or in part, at less than the actual amount owing to the Association or the face or par value thereof;

(11) To lease any property of the Association for more than one year or otherwise dispose of it, in whole or in part;

(12) To take whatever actions are deemed appropriate, including the institution of litigation, if appropriate, to recover on claims of the Association against current or former officers, directors and controlling persons of the Association, affiliated persons and third parties; and

RESOLVED FURTHER, That pursuant to § 548.2(o) of the Federal Regulations, the Bank Board hereby orders and directs that the Conservator shall exercise authority and perform functions pursuant to §§ 548.2, 548.3, and 548.5 of the Federal Regulations, and that any requirement in such sections for approval by the Bank Board or "Director" (as that term is

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

employed in Part 548), or acceptance or approval of the General Counsel, or certification to the Bank Board, shall not apply; and

RESOLVED FURTHER, That the Conservator is hereby directed to execute a request to the Federal Deposit Insurance Corporation (a form of which request is in the Minute Exhibit file); and

Special Representative

RESOLVED FURTHER, That one or more persons shall be designated as Special Representative of the Conservator ("SR"); and that such designated person or persons shall have the power and authority to act in the name and on behalf of the Conservator, including the authority, subject to the direction of the Executive Director of the FSLIC, a Deputy Executive Director of the FSLIC, or the designee of any of them ("Director") to take prompt possession of the books, records, property, and assets of every kind and description of the Association and to exercise all powers of the Conservator; that initially, John Marchant shall serve as SR, and that the Director may replace or remove any SR and may designate such additional SR(s) as the Director deems appropriate, prescribing the functions and responsibilities of such SR(s) as the Director deems appropriate; and

RESOLVED FURTHER, That for the purpose of taking possession of the Association and making necessary filings and taking similar actions in connection therewith, the persons listed in the attachment to this Resolution shall serve as SRs; and that the Director may replace or remove any such SR and may designate additional SR(s) for the purpose previously stated as the Director deems appropriate, prescribing the functions and responsibilities of such SR(s) as the Director deems appropriate; and

Compensation of Special Representative

RESOLVED FURTHER, That the expenses and compensation of a Special Representative shall be paid from the assets of the Association; and

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

RESOLVED FURTHER, That any Special Representative who is not an employee of the United States Government or any agency thereof shall be paid a salary at a rate per annum approved by the Director and reasonable expenses of each Special Representative approved by the Director shall be paid from the assets of the Association; and

Disclosure of Authority

RESOLVED FURTHER, That the Conservator shall require that any independent contractor, consultant, or counsel employed by the Conservator or any Special Representative in connection with the conservatorship of the Association fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant or counsel to make legally binding representations on behalf of the Conservator; and

Implementing Authority

RESOLVED FURTHER, That the Director, or any agent, employee or attorney that may be designated by the Director in writing, is hereby authorized to take such action as may be necessary or appropriate to carry out the obligations of the Conservator, pursuant to the Conservator's appointment; and

RESOLVED FURTHER, That the FSLIC in its corporate capacity is hereby authorized to make advances to the Conservator for the purpose of enabling the Conservator to perform its functions and duties, on such terms and conditions as the Director shall deem appropriate, and the Director may execute such documents as may be necessary to make such advances or enter into collateral agreements, provided that the final form of any such document has been approved by the Office of the General Counsel of the Bank Board; and

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

No. 89-710P

Notice

RESOLVED FURTHER, That the Conservator may elect to notify by written notice served by certified mail, rather than personally, by registered mail or by telegraph, all persons and entities that the Conservator knows to be holding or in possession of assets of the Association; and

Reports and Records

RESOLVED FURTHER, That each SR shall keep a record of his or her actions as SR of the Conservator, and shall report on such actions from time to time as directed by the Director; and

RESOLVED FURTHER, That the Director shall from time to time report to the Bank Board with respect to actions taken pursuant to this Resolution.

By the Federal Home Loan Bank Board

/s/ John F. Ghizzoni

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

No. 89-710P

Attachment

Ann Barnes
Peggy Battle
S. Blair Bean
Douglas Brewer
Earl Cook
Kenneth Davis
W. Christopher Doss
Brett Edwards
Megan Evans
Kenton Fox
Doris Garrett
Edward P. Gerber
Deena Jensen
Jean Lorentzen
John Marchant
Art Murphy
Karen Powell
Ann Roy
Darlene Sasaki
Paula Schepp
John Sears
Robert Suguitan
Jack Taylor
William Ward
Douglas Warnecke
William Wingert

D

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas
Under § 406(c)(1)(B)

No. 89-713 P

Date: March 8, 1989

Issued Under Delegated Authority

WHEREAS, The Federal Home Loan Bank Board ("Bank Board") has exclusive power and jurisdiction pursuant to § 406(c)(1)(B) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1729(c)(1)(B) (1982), to appoint the Federal Savings and Loan Insurance Corporation ("FSLIC"), as sole conservator of an insured institution other than a federal association in the event that the Bank Board determines that any of the grounds specified in § 5(d)(6)(A)(i), (ii), or (iii) of the HOLA, 12 U.S.C. § 1464(d)(6)(A)(i), (ii), or (iii) (1982), exist with respect to such association:

NOW, THEREFORE, IT IS RESOLVED, That the Bank Board, on the basis of the administrative record before it, finds that the ground for the appointment of a conservator set forth in § 5(d)(6)(A)(i) of the HOLA, 12 U.S.C. § 1464(d)(6)(A)(i) (1982), exists with respect to Benjamin Franklin Savings Association, Houston, Texas ("Association"), in that the Association is insolvent in that its assets are less than its obligations to its creditors and others, including its withdrawable accountholders; and

RESOLVED FURTHER, That the Bank Board hereby appoints the FSLIC as sole conservator ("Conservator") for the Association, not for the purpose of liquidation, pursuant to § 406(c)(1)(B) of the NHA, 12 U.S.C. § 1729(c)(1)(B) (1982), provided, that the exercise of this appointment shall not be effective, and this appointment shall not be exercised, unless and until an agent of the Bank Board or the FSLIC shall have received the written concurrence of the Commissioner, Savings and Loan Department, State of Texas, that the ground specified above exists with respect to the Association; and pursuant to §§ 406(c)(1)(B)(i)(II) and (c)(3)(A) of the NHA, 12 U.S.C. §§ 1729(c)(1)(B)(i)(II) and (C)(3)(A) (1982), and § 5(d)(6)(D) of the HOLA, 12 U.S.C. § 1464(d)(6)(D) (1982), the Bank Board hereby

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004-53-1927

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Savings Association,
Houston, Texas

No. 89-713 P

authorizes the Conservator to operate the Association in its own name, to conserve the assets of the Association in the manner and to the extent authorized by the Bank Board by this resolution and other resolutions and orders of the Bank Board, and to have and exercise all the rights, powers, privileges, and immunities, and assume and perform all the duties, responsibilities, and obligations of a conservator for a Federal savings and loan association accorded or imposed by, and subject to applicable provisions of law, regulations, and orders and resolutions issued by the Bank Board.

By the Federal Home Loan Bank Board

/s/ John F. Chizzoni

EXHIBIT "B"

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FEDERAL HOME LOAN BANK BOARD

Replacement of Conservator with a Receiver for Benjamin Franklin Savings Association, Houston, Texas

No. 89-1668 p

June 28, 1989

Issued Under Delegated Authority

Recitals

WHEREAS, Benjamin Franklin Savings Association, Houston, Texas ("Association"), is a stock institution incorporated under the laws of the State of Texas, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"); and

WHEREAS, The Federal Home Loan Bank Board ("Bank Board") by Resolution No. 89-710P, dated March 8, 1989, appointed the FSLIC as conservator of the Association ("Conservator"), not for the purpose of liquidation, pursuant to § 406(c)(1)(B) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1729(c)(1)(B) (1982), after a determination by the Bank Board that the ground specified in § 5(d)(6)(A)(i) of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. § 1464(d)(6)(A)(i) (1982), existed in that the Association was insolvent in that its assets were less than its obligations to its creditors and others, including holders of its withdrawable accounts; and

WHEREAS, Pursuant to § 406(c)(3) of the NHA, 12 U.S.C. § 1729(c)(3) (1982), in any case in which the FSLIC is appointed conservator of an insured institution pursuant to § 406(c)(1) of the NHA, 12 U.S.C. § 1729(c)(1) (1982), the provisions of § 5(d) of the HOLA, 12 U.S.C. § 1464(d) (1982), shall be applicable in the same manner and to the same extent as if such institution were a federal association with respect to which the FSLIC had been appointed conservator; and

WHEREAS, Pursuant to § 5(d)(6)(D) of the HOLA, 12 U.S.C. § 1464(d)(6)(D) (1982), the Bank Board may, without any requirement of notice, hearing, or other action, replace a conservator with a receiver; and

FEDERAL HOME LOAN BANK BOARD

Replacement of Conservator with a Receiver for
Benjamin Franklin Savings Association,
Houston, Texas

No. 89-1668 p

WHEREAS, the Bank Board has considered staff memoranda together with accompanying attachments and exhibits (copies of which memoranda are in the Minute Exhibit File), and the balance of the administrative record before it, including the administrative record underlying the Bank Board's appointment of the Conservator, which record is incorporated by reference;

Findings

NOW, THEREFORE, IT IS RESOLVED, That, on the basis of the record before the Bank Board, the Bank Board finds that the ground specified in § 5(d)(6)(A)(i) of the HOLA, 12 U.S.C. § 1464(d)(6)(A)(i) (1982), existed as of March 8, 1989, and continues to exist with respect to the Association in that the Association was as of such date and continues to be insolvent in that its assets were as of such date and continue to be less than its obligations to its creditors and others, including holders of its withdrawable accounts; and

Replacement of Conservator with Receiver

RESOLVED FURTHER, That the Bank Board, pursuant to § 5(d)(6)(D) of the HOLA, 12 U.S.C. § 1464(d)(6)(D) (1982), hereby replaces the Conservator with the FSLIC as sole receiver of the Association ("Receiver") for the purpose of liquidation; and

Directions to the Conservator

RESOLVED FURTHER, That the Bank Board directs the Conservator, pursuant to § 5(d)(6)(D) of the HOLA, 12 U.S.C. § 1464(d)(6)(D) (1982), and § 547.8(b) of the Rules and Regulations for the Federal Savings and Loan System ("Federal Regulations"), 12 C.F.R. § 547.8(b) (1988), to surrender possession of the Association to the Receiver; and

RESOLVED FURTHER, That upon the Conservator's surrender of possession of the Association to the Receiver, the appointment of the FSLIC as Conservator of the Association shall terminate; and

FEDERAL HOME LOAN BANK BOARD

Replacement of Conservator with a Receiver for
Benjamin Franklin Savings Association,
Houston, Texas

RESOLVED FURTHER, That the Conservator shall file with the Secretary to the Bank Board the report required by § 548.6 of the Federal Regulations, 12 C.F.R. § 548.6 (1988); and

Priorities

RESOLVED FURTHER, That, as the Association is chartered under the laws of the State of Texas and as the Bank Board has adopted a final rule establishing the priorities of claims of creditors and recognizing state law priorities with respect to depositors for state-chartered institutions, § 569c.11 of the Rules and Regulations for the FSLIC ("Insurance Regulations"), 53 F.R. 25129, to be codified at 12 C.F.R. § 569c.11, the Receiver is directed to recognize the priorities of the claims of depositors established under Texas law; and

RESOLVED FURTHER, That, the Office of the General Counsel ("OGC") having reviewed applicable provisions of Texas law and having concluded that under Texas law depositors have priority over the claims of general creditors, the Receiver is directed to accord priority to the claims of creditors in accordance with § 569c.11 of the Insurance Regulations, 53 F.R. 25129, and, pursuant to § 569c.11(a)(6) of the Insurance Regulations, to accord priority to claims of depositors with respect to their deposits over the claims of general creditors, notwithstanding § 549.5-1 of the Federal Regulations, 12 C.F.R. § 549.5-1 (1988), or any other provision of Part 549 of the Federal Regulations, 12 C.F.R. Part 549 (1988); and

Worthlessness of General Creditor,
Subordinated Debt and Stock Interests

RESOLVED FURTHER, That the Bank Board finds that the Association is not a going concern and could continue as a going concern only with financial assistance from the FSLIC; and

RESOLVED FURTHER, That the Bank Board finds that the proceeds that can be realized upon liquidation of the Association's assets are insufficient to satisfy the Association's secured, and deposit liabilities, and unsubordinated claims of governmental

DG4-58-19

FEDERAL HOME LOAN BANK BOARD

Replacement of Conservator with a Receiver for
Benjamin Franklin Savings Association,
Houston, Texas

No. 89-1669P

units for unpaid taxes (other than Federal income taxes), such that no amount remains for payment of general creditors or for distribution to the Association's subordinated debt holders or stockholders, and therefore, the Association's general creditors' claims, subordinated debt and stock (including common stock, preferred stock, permanent stock, guarantee stock, stock and nonwithdrawable accounts, as defined by § 561.42 of the Insurance Regulations, 12 C.F.R. § 561.42 (1988), are worthless; and

Powers and Duties of the Receiver

RESOLVED FURTHER, That, pursuant to § 406(c)(1)(B), (c)(3), and (d) of the NHA, 12 U.S.C. § 1729(c)(1)(B), (c)(3), and (d) (1982), the FSLIC as Receiver shall have and exercise all the powers, rights, immunities and privileges, and shall assume, perform, and discharge all the duties, responsibilities, and obligations of a receiver for a Federal savings and loan association accorded or imposed by, and subject to, applicable provisions of law and regulations and orders of the Bank Board as now or hereafter in effect, including, but not limited to, § 5(d) of the HOLA, 12 U.S.C. § 1464(d) (1982), § 406 of the NHA, 12 U.S.C. § 1729 (1982), and the provisions of Parts 547 and 549 of the Federal Regulations, 12 C.F.R. Parts 547 and 549 (1988), and Part 569c of the Insurance Regulations, 12 C.F.R. Part 569(c) (1988); and

RESOLVED FURTHER, That, in addition to all powers and authority of a receiver provided for by law, regulation and order, the Receiver is hereby authorized and empowered, and need not seek further approval from the Bank Board, to borrow money in such amounts from any source and in any manner as the Receiver requires to fulfill its duties as receiver, to execute, acknowledge, and deliver evidence of indebtedness for such borrowings, and to secure repayment of such borrowings by mortgages, pledges, and assignments in trust, or by hypothecation of any property of the Association, provided that any such borrowing shall be evidenced by a written contract, security agreement or other document, and provided further that the form of any contract, security agreement, or other document for such borrowings shall be approved by the Office of the General Counsel ("OGC"); and

FEDERAL HOME LOAN BANK BOARD

Replacement of Conservator with a Receiver for Benjamin Franklin Savings Association, Houston, Texas

No. 89-1449 P

Page 8

RESOLVED FURTHER, That the Receiver need not furnish any bond; and

RESOLVED FURTHER, That, notwithstanding the provisions of § 549.1, as made applicable by § 549.2, of the Federal Regulations, 12 C.F.R. §§ 549.1 and 549.2 (1988), the Receiver may elect to notify by certified mail all persons and entities that the Receiver knows to be holding or to be in possession of assets of the Association; and

RESOLVED FURTHER, That the Receiver is hereby directed to provide notice to general creditors of the Association, subordinated debt holders and stockholders advising them of the appointment of the Receiver and the determination of the worthlessness of general creditors' claims and stock, including subordinated debt; and

Implementing Authority

RESOLVED FURTHER, That the Executive Director, or the Principal Deputy Executive Director of the FSLIC, the Deputy Executive Director for Asset Management-Liquidation, FSLIC, or the Director, Operations and Liquidations Division, Office of the FSLIC, or the designee of any of them ("Director-Receiver"), is hereby authorized to take such action as may be necessary or appropriate to exercise the rights or to carry out the obligations of the FSLIC as Receiver, pursuant to its appointment; and

RESOLVED FURTHER, That the FSLIC, in its corporate capacity, and not as Receiver is hereby authorized to make advances to the Receiver, evidenced by written documents, for the purpose of enabling the Receiver to perform its functions and duties, and to pay costs and expenses of the receivership, on such terms and conditions as the Executive Director or the Principal Deputy Executive Director, FSLIC, the Director, Financial Assistance Division, Office of the FSLIC, or the designee of any of them ("Director-Corporate") shall deem appropriate, and the Director-Corporate may execute such documents as may be necessary to make such advances and enter into related collateral agreements,

FEDERAL HOME LOAN BANK BOARD

Replacement of Conservator with a Receiver for Benjamin Franklin Savings Association, Houston, Texas

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provided that the final forms of any such documents or agreements have been approved by the OGC; and

Special Representatives

RESOLVED FURTHER, That one or more persons shall be designated as Special Representative of the Receiver ("SR"); that such designated person or persons shall have the power and authority to act in the name and on behalf of the Receiver, including the authority, subject to the direction of the Director-Receiver, to take prompt possession of the books, records, property, and assets of every kind and description of the Association and to exercise all powers of the Receiver; that, initially, the persons listed in the attachment to this Resolution shall serve as SR(s); and that the Director-Receiver may replace or remove any SR and may designate such additional SR(s) as the Director-Receiver deems appropriate, prescribing the functions and responsibilities of such SR(s) as the Director-Receiver deems appropriate; and

Indemnification of Special Representatives

RESOLVED FURTHER, That the Director-Corporate is hereby authorized to contract on behalf of the FSLIC, acting in its corporate capacity, and not as Receiver, to indemnify, to the extent not indemnified from the assets of the Association and under applicable law, any person who is not an employee of the United States Government or any agency thereof, and who accepts an appointment to act as an SR pursuant to this Resolution, and to hold such person harmless from and against any loss or liability that may arise from such person's good faith performance of his or her fiduciary duties and responsibilities as an SR; provided that the final form of any agreement providing for such indemnification is approved by the OGC; and

Compensation of Special Representatives

RESOLVED FURTHER, That each SR who is not an employee of the United States Government, or an agency thereof, shall be paid at a rate per annum approved by the Director-Receiver, and such salary and the reasonable expenses of each SR approved by the

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FEDERAL HOME LOAN BANK BOARD

Replacement of Conservator with a Receiver for Benjamin Franklin Savings Association, Houston, Texas

No. 89-1668P

Director-Receiver shall be paid from the assets of the Association; and

Termination of Employment Contracts

RESOLVED FURTHER, That the Bank Board determines that, upon the appointment of the FSLIC as Receiver for the Association for the purpose of liquidation, the Association shall be in "default", as such term is defined in § 401(d) of the NHA, 12 U.S.C. § 1724(d) (1982), as amended; and

RESOLVED FURTHER, That every employment contract between the Association and its officers and employees is hereby terminated by the Bank Board, effective upon the date of default of the Association; and

Disclosure of Authority

RESOLVED FURTHER, That the Receiver shall require that any independent contractor, consultant, or counsel employed by the Receiver in connection with the liquidation of the Association shall fully disclose to all parties with which such contractor, consultant or counsel is negotiating, any limitation on the authority of such contractor, consultant or counsel to make legally binding representations on behalf of the Receiver; and

Records and Reports

RESOLVED FURTHER, That each ER shall keep a record of his or her actions as ER for the Receiver, and shall report on such actions from time to time, as directed by the Director-Receiver; and

RESOLVED FURTHER, That the Director-Corporate and the Director-Receiver shall from time to time report to the Bank Board with respect to actions taken pursuant to this Resolution.

By the Federal Home Loan Bank Board

John F. Ghizzoni
Assistant Secretary

92151210

Note Attachment
FEDERAL HOME LOAN BANK BOARD

Replacement of Conservator with a Receiver for Benjamin Franklin Savings Association, Houston, Texas

No. 89-1668 p

ATTACHMENT

John Arms
Peggy Battle
S. Blair Bean
Kevin Beard
Earl Cook
Kenneth Davis
Hogan Evans
Doris Garrett
Edward F. Gerber
Jack Lorentzen
John Marchant
Ann C. McGlinn
John Pace
Karen Powell
Ann Roy
Debra Sturlock
John Sears
Jeff Smith
Tim Taylor
Douglas Warnecke
William Wingert

EXHIBIT "C"

004-58-1936

B

FEDERAL HOME LOAN BANK BOARD

Organization of Benjamin Franklin Federal
Savings Association,
Houston, Texas

No. 89-1169P

Date: June 28, 1989

Issued Under Delegated Authority

Recitals

WHEREAS, Benjamin Franklin Savings Association, Houston, Texas ("Association") is a State-chartered stock institution, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"); and

WHEREAS, The Federal Home Loan Bank Board ("Bank Board"), by Resolution No. 89-710P, dated March 8, 1989, appointed the FSLIC as Conservator for the Association ("Conservator"); and

WHEREAS, The Bank Board, by Resolution No. 89-1169P, dated June 28, 1989, replaced the Conservator with the FSLIC as sole receiver of the Association ("Receiver"); and

WHEREAS, Upon the appointment of the Receiver, the Association is in "default" as such term is defined in § 401(d) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1724(d) (1982); and

WHEREAS, Pursuant to § 406(a) of the NHA, 12 U.S.C. § 1729(a) (1982), in order to facilitate the liquidation of insured institutions, the FSLIC is authorized to provide for the organization of a new Federal savings and loan association subject to the approval of the Bank Board; and

WHEREAS, Pursuant to § 406(c)(1)(B)(i)(II) and (b)(1)(A)(iv) of the NHA, 12 U.S.C. § 1729(c)(1)(B)(i)(II) and (b)(1)(A)(iv) (1982), the FSLIC, upon being appointed Receiver for the Association, is authorized to organize a new Federal savings and loan association to take over its assets; and

WHEREAS, The Bank Board has considered a proposed Plan of Organization and exhibits thereto for a new Federal savings and loan association (a copy of which Plan of Organization is in the Minute Exhibit File); and

FEDERAL HOME LOAN BANK BOARD

Organization of Benjamin Franklin Federal
Savings Association,
Houston, Texas

No. 89-1669P

WHEREAS, The Bank Board has considered staff memoranda, together with accompanying attachments and exhibits (copies of which are in the Minute Exhibit File) and the balance of the administrative record before it:

Exercise of Authority Under § 406 of the NHA

NOW, THEREFORE, IT IS RESOLVED, That the Bank Board, as operating head of the FSLIC, hereby determines that the FSLIC, pursuant to § 406(a) of the NHA, 12 U.S.C. § 1729(a) (1982), shall provide for the organization of a new Federal savings and loan association in order to facilitate the liquidation of the Association and to make available accounts, including insured accounts, to the insured accountholders of the Association, and the Bank Board hereby approves such action of the FSLIC; and

RESOLVED FURTHER, That the FSLIC as Receiver deems it to be in the best interests of the Association, its savers, and the FSLIC in its corporate capacity to organize a new association to take over the assets and assume certain liabilities of the Association; and

RESOLVED FURTHER, That, pursuant to § 406(c)(1)(B)(i)(II) and (b)(1)(A)(iv) of the NHA, 12 U.S.C. § 1729(c)(1)(B)(i)(II) and (b)(1)(A)(iv) (1982), the FSLIC as Receiver for the Association shall organize a new Federal association to take over the assets and assume certain liabilities of the Association; and

Plan of Organization

RESOLVED FURTHER, That, effective upon the appointment of the FSLIC as Receiver for the Association, the Executive Director or the Principal Deputy Executive Director of the FSLIC, or the Director, Financial Assistance Division, Office of the FSLIC, or the designee of any of them ("Director"), is hereby authorized to execute on behalf of the FSLIC a Plan of Organization for a new Federal mutual savings and loan association to be known as Benjamin Franklin Federal Savings Association, Houston, Texas ("New Federal"); and a Special Representative of the Receiver

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004-58-1938

FEDERAL HOME LOAN BANK BOARD

Organization of Benjamin Franklin Federal
Savings Association,
Houston, Texas

No. 89-1169P

("SR") is hereby authorized and directed to approve the execution of such Plan of Organization; and

RESOLVED FURTHER, That the Director is hereby authorized to name those persons who shall serve initially as directors of New Federal and the chairman of its board of directors, unless named by the Bank Board; and

RESOLVED FURTHER, That the Plan of Organization, or a Plan of Organization in substantially similar form, as completed by the Director under the authority of this Resolution, as executed by the Director, and as approved by the SR, is hereby approved; and

Issuance of Charter and Bylaws

RESOLVED FURTHER, That a Charter in the form of the proposed Federal Mutual Charter is hereby approved and shall be issued to New Federal; and the General Counsel or a Deputy General Counsel, or an attorney of the Office of the General Counsel ("OGC"), or fee counsel designated by any of them, may execute the Charter on behalf of the Bank Board, and the Secretary or an Assistant Secretary may attest and date said Charter upon the appointment of the Receiver, and such Charter shall be deemed issued at the time of such dating and attesting by the Secretary or Assistant Secretary; and

RESOLVED FURTHER, That, with the concurrence of the OGC, the Director may amend such Charter or bylaws prior to the conclusion of the first meeting of the board of directors of New Federal, without further approval by the Bank Board; and

RESOLVED FURTHER, That New Federal shall have bylaws in the form proposed, and such bylaws may be amended only with the approval of the Director and the General Counsel or a Deputy General Counsel, notwithstanding the provisions of § 544.2 and § 544.5 of the Rules and Regulations for the Federal Savings and Loan System ("Federal Regulations"), 12 C.F.R. § 544.2 and § 544.5 (1988), or any successor regulation concerning amendment of bylaws of Federal mutual savings and loan associations; and

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FEDERAL HOME LOAN BANK BOARD

Organization of Benjamin Franklin Federal Savings Association, Houston, Texas

No. 89-1649P

RESOLVED FURTHER, That, prior to the first meeting of the board of directors of New Federal or the appointment of a conservator for New Federal, the Director may exercise all powers of the board of directors of New Federal necessary or appropriate for the organization and operation of New Federal and the acquisition of substantially all of the assets and assumption of the secured, deposit and certain tax liabilities of the Association by New Federal; and

RESOLVED FURTHER, That, notwithstanding the provisions of New Federal's Charter, to the extent permitted by the Principal Supervisory Agent of the Bank Board, Dallas, Texas, New Federal may do business under the name of Benjamin Franklin Savings Association; and

Membership in the Federal Home Loan Bank

RESOLVED FURTHER, That, upon receipt of its Charter, New Federal shall be a member of the Federal Home Loan Bank of Dallas ("Bank") and the Secretary or an Assistant Secretary shall issue a certificate of Bank membership to New Federal; and

Insurance of Accounts

RESOLVED FURTHER, That insurance of accounts of New Federal is hereby approved, the Secretary or an Assistant Secretary is authorized to issue a certificate of insurance to New Federal, and the FSLIC admission fee and the initial premium are waived, provided that the proposed Application for Insurance of Accounts is executed by New Federal and returned to the FSLIC; and

Completion of Organization

RESOLVED FURTHER, That, pursuant to § 543.7-1 of the Federal Regulations, 12 C.F.R. § 543.7-1 (1988), the organization of New Federal shall be deemed complete when the Director or a duly authorized officer of New Federal has certified to completion of

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FEDERAL HOME LOAN BANK BOARD

Organization of Benjamin Franklin Federal
Savings Association,
Houston, Texas

No. 89-1669P

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the steps required by paragraphs (A) through (D) of the proposed Plan of Organization.

By the Federal Home Loan Bank Board

/s/ John F. Ghizzoni

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EXHIBIT "D"

004-58-1941

ACQUISITION AGREEMENT

BETWEEN

THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
AS RECEIVER FOR
BENJAMIN FRANKLIN SAVINGS ASSOCIATION
HOUSTON, TEXAS

AND

BENJAMIN FRANKLIN FEDERAL SAVINGS ASSOCIATION,
HOUSTON, TEXAS

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ACQUISITION AGREEMENT BETWEEN
THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
AS RECEIVER FOR
BENJAMIN FRANKLIN SAVINGS ASSOCIATION
HOUSTON, TEXAS

AND

BENJAMIN FRANKLIN FEDERAL SAVINGS ASSOCIATION,
HOUSTON, TEXAS

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004-58-1943

ACQUISITION AGREEMENT

THIS AGREEMENT is made and entered into this 29th day of June, 1989, by and between the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, in its capacity as Receiver for Benjamin Franklin Savings Association, Houston, Texas (respectively, "RECEIVER" and "CLOSED ASSOCIATION"), and BENJAMIN FRANKLIN FEDERAL SAVINGS ASSOCIATION, Houston, Texas ("ACQUIRING ASSOCIATION").

RECITALS

A. The CLOSED ASSOCIATION is a stock savings association organized under the laws of the State of Texas, the accounts of which are insured by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION in its capacity as a corporate instrumentality of the United States ("CORPORATION").

B. The FEDERAL HOME LOAN BANK BOARD ("BANK BOARD"), pursuant to Resolution No. 89-1668, dated June 28, 1989, duly appointed the CORPORATION as RECEIVER for the CLOSED ASSOCIATION, and the RECEIVER's appointment has become effective.

C. The RECEIVER has taken possession of the CLOSED ASSOCIATION and by operation of law has succeeded to all the rights, titles, powers, and privileges of the CLOSED ASSOCIATION.

D. The ACQUIRING ASSOCIATION is a newly chartered Federal mutual savings association, the accounts of which are insured by the CORPORATION.

E. It has been mutually agreed between the ACQUIRING ASSOCIATION and the RECEIVER, and the BANK BOARD has determined that it is in the best interests of the CLOSED ASSOCIATION, its savers, and the CORPORATION, that substantially all of the CLOSED ASSOCIATION's assets and secured, deposit, and certain tax liabilities be immediately transferred to and assumed by the ACQUIRING ASSOCIATION, as provided in this Agreement.

In consideration of the foregoing and of the mutual covenants and promises contained herein, the RECEIVER and the ACQUIRING ASSOCIATION enter into the following agreement.

AGREEMENT

§ 1 Definitions. For the purposes of this Agreement, the following terms have the indicated meanings:

(a) "Deposit." The term "Deposit" means a withdrawable or repurchasable share, investment certificate or deposit in the CLOSED ASSOCIATION of a type that is (or would be, but for the $100,000 limitation) insurable under Section 405(a) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1728(a) (1982), including, without limitation, all uncollected items included in the depositors' balances and credited on the books of the CLOSED ASSOCIATION, provided, however, that the term "Deposit" shall not include all or any portion of those Deposit balances designated by the RECEIVER or the CORPORATION from time to time that may be required, in the RECEIVER's or CORPORATION's sole discretion, as appropriate, to satisfy any liquidated or

contingent liability of the depositor arising from any known or unknown claim, demand, cause of action or judgment of the CLOSED ASSOCIATION, or the ACQUIRING ASSSOCIATION as its successor, against such depositor, whether or not the amount of the liability is, or can be, determined as of the Effective Date (such exclusion from the term "Deposit" to be effective at the time the ACQUIRING ASSOCIATION is notified of the designation of such account by the RECEIVER or the CORPORATION).

(b) "Depositor." The term "Depositor" means the holders of a Deposit in the CLOSED ASSOCIATION.

(c) "Effective Date." The "Effective Date" is the date on which this Agreement is executed as provided in § 17 of this Agreement.

(d) "Excluded Papers." The term "Excluded Papers" shall have the meaning set forth in § 2 of this Agreement.

(e) "Fair Market Value." The term "Fair Market Value" means, with respect to the purchase and sale of any property, the price at which a willing buyer and willing seller under no undue pressure to buy or sell would purchase and sell such property on the Effective Date, taking into account any debt secured by such property or any security interest to which it is subject at the time of the transfer of such property to the ACQUIRING ASSOCIATION, and, with respect to the lease of any property, the rent at which a willing lessor and a willing lessee, under no undue pressure to lease, would lease such property on the Effective Date.

(f) "Leasehold Improvements." The term "Leasehold Improvements" means those improvements, additions, alterations and installations constituting all or a part of the Leased Offices that were acquired, added, built, installed or purchased at the expense of the CLOSED ASSOCIATION, regardless of who shall hold legal title to such on the Effective Date.

(g) "Leased Offices." The term "Leased Offices" means the offices, drive-in facilities and teller facilities (staffed or automated), together with appurtenant parking, storage and service facilities, leased by the CLOSED ASSOCIATION on the Effective Date.

(h) "Tax Claim." The term "Tax Claim" means any claim of a governmental unit for unpaid taxes, other than Federal income taxes, except to the extent subordinated to depositor claims pursuant to applicable law.

§ 2 Purchase of Assets and Transfer of Property Held in Trust. The RECEIVER hereby sells to the ACQUIRING ASSOCIATION, and the ACQUIRING ASSOCIATION hereby purchases from the RECEIVER all of the RECEIVER's right, title, and interest in and to all of the CLOSED ASSOCIATION's assets that the RECEIVER owns or holds and any of the CLOSED ASSOCIATION's assets hereafter acquired by the RECEIVER, excluding, however: (i) Leased Offices; (ii) Leasehold Improvements; and (iii) All items, parts, or portions of the CLOSED ASSOCIATION's books and records that relate to liabilities that are not assumed by the ACQUIRING ASSOCIATION pursuant to § 3 of this Agreement and such limited

items, parts, or portions of the CLOSED ASSOCIATION's books and records as are specifically identified by the RECEIVER (the "Excluded Papers"). The RECEIVER also transfers to the ACQUIRING ASSOCIATION all assets or property held by the CLOSED ASSOCIATION in trust or subject to arrangements in the nature of a trust ("Trust") and the ACQUIRING ASSOCIATION agrees to honor the obligations of the CLOSED ASSOCIATION under such a Trust to the extent of the assets or property so held in Trust.

§ 3 Assumption of Secured, Deposit and Certain Tax Claim Liabilities. The ACQUIRING ASSOCIATION hereby expressly assumes and agrees to pay, perform, and discharge (a) all of the CLOSED ASSOCIATION's liabilities to Depositors with respect to their Deposits, (b) the CLOSED ASSOCIATION's liabilities that are secured by assets purchased by the ACQUIRING ASSOCIATION pursuant to § 2 of this Agreement to the extent of the value of such assets constituting the security for such liabilities, and (c) the CLOSED ASSOCIATION's liabilities for Tax Claims.

§ 4 Records.

(a) The RECEIVER represents that it is delivering to the ACQUIRING ASSOCIATION, and the ACQUIRING ASSOCIATION acknowledges that the RECEIVER is delivering to it, among the assets sold and purchased under § 2 of this Agreement, all of the CLOSED ASSOCIATION's books and records, except the Excluded Papers, if any.

(b) The ACQUIRING ASSOCIATION agrees to preserve and keep safe all of the CLOSED ASSOCIATION's books and records that it acquires pursuant to this Agreement, to permit the

RECEIVER at any reasonable time to inspect, make extracts from or copies of any of such books and records, and to cooperate fully with the RECEIVER in the preparation of the inventory described below.

(c) As a condition of this Agreement, the ACQUIRING ASSOCIATION agrees, at its own expense, either to segregate and keep separate or, in the alternative and at the option of the ACQUIRING ASSOCIATION, to reconstruct as of the date of this Agreement, the CLOSED ASSOCIATION's books and records transferred to it until the period in which the CLOSED ASSOCIATION may file an action for removal of the RECEIVER pursuant to law has expired, or, if such action is filed, until the dismissal of such action or the issuance of an order determining an appeal from any order of a court directing the removal of the RECEIVER.

§ 5 Inventory. To the extent directed by the BANK BOARD and as soon as is practicable after the Effective Date of this Agreement, the RECEIVER shall make or cause to be made an inventory of the CLOSED ASSOCIATION's assets and a record of its liabilities. The RECEIVER shall furnish to the ACQUIRING ASSOCIATION upon its completion a copy of the inventory and a record of the CLOSED ASSOCIATION's secured, deposit and certain Tax Claim liabilities that were assumed pursuant to this Agreement.

§ 6 Purchase Price. The purchase price of all assets sold to the ACQUIRING ASSOCIATION pursuant to § 2 shall be the assumption of liabilities provided for in § 3, which liabilities exceed the value of the assets being purchased.

§ 7 Duties With Respect to Depositors.

(a) The ACQUIRING ASSOCIATION agrees to pay, in accordance with the provisions of applicable law and the individual contracts governing the CLOSED ASSOCIATION's Deposits, all properly drawn and presented withdrawal requests by the CLOSED ASSOCIATION's Depositors whose Deposits are assumed by the ACQUIRING ASSOCIATION pursuant to § 3 of this Agreement, to the extent that such Deposits are sufficient to permit such payments and in compliance with the contractual terms of such Deposits, and in all other respects to discharge, in the usual course of business, the CLOSED ASSOCIATION's duties and obligations with respect to its Depositors; provided, however, that the ACQUIRING ASSOCIATION does not assume any special or unusual duties of the CLOSED ASSOCIATION to such Depositors unless the terms of such duties are disclosed in the CLOSED ASSOCIATION's records. Further, in accordance with applicable law and individual contracts governing such Deposits, the ACQUIRING ASSOCIATION agrees to pay interest on all of the CLOSED ASSOCIATION's Deposits that are assumed pursuant to § 3 of this Agreement.

(b) If any such Depositor declines to accept the obligation of the ACQUIRING ASSOCIATION to pay the CLOSED ASSOCIATION's Deposit liabilities assumed pursuant to § 3 of this Agreement and assert a claim against the RECEIVER for any part of such assumed Deposit liability, the ACQUIRING ASSOCIATION shall provide the RECEIVER, upon demand, with an amount of money sufficient to enable it to pay the claim of such Depositors, less any

applicable early withdrawal penalties, not exceeding the amount credited to such person on the ACQUIRING ASSOCIATION's records at the time such demand is made, and, upon paying the RECEIVER as so demanded, the ACQUIRING ASSOCIATION shall be discharged from any further liability for such claim under this Agreement.

(c) The ACQUIRING ASSOCIATION shall give written notice, in a form approved by the RECEIVER or its counsel, to the CLOSED ASSOCIATION's Depositors whose Deposits are assumed by the ACQUIRING ASSOCIATION pursuant to § 3 of this Agreement of its assumption of liability for such Deposits.

§ 8 Leased Offices and Leasehold Improvements.

(a) The ACQUIRING ASSOCIATION shall provide thrift services in the trade area of the CLOSED ASSOCIATION commencing on the first regular business day after the Effective Date. At the option of the ACQUIRING ASSOCIATION, such services may be provided at any or all of the Leased Offices, or at other premises within the trade area. For any period during which the ACQUIRING ASSOCIATION occupies one or more of the Leased Offices, the ACQUIRING ASSOCIATION agrees to pay to the RECEIVER a Fair Market Value rent (as hereinafter set forth) for the use of each Leased Office occupied and of all Leasehold Improvements located therein or thereon. Rent for property not owned by the acquiring ASSOCIATION shall be an amount equal to any and all rents and other amounts which the RECEIVER incurs or accrues as an obligation or is obligated to pay (for the period of the ACQUIRING ASSOCIATION's occupancy) pursuant to all leases and contracts regarding the respective property.

(b) The RECEIVER hereby grants to the ACQUIRING ASSOCIATION a ninety (90) day option, commencing at the Effective Date, to take an assignment or sublease for the entire remaining term of any or all of the Leased Offices, to the extent that the respective lease(s) can be assigned or premises sublet; provided that the exercise of the option with respect to any lease must be as to all premises subject to such lease. The ACQUIRING ASSOCIATION may extend this option for an additional thirty (30) days upon notice to the RECEIVER provided within seventy-five (75) days after the Effective Date. If the ACQUIRING ASSOCIATION exercises its option with respect to a Leased Office not occupied by the ACQUIRING ASSOCIATION continuously since the Effective Date, the ACQUIRING ASSOCIATION shall pay to the RECEIVER rent as determined pursuant to § 8(a) for the period from the Effective Date to the date of exercise of the option.

(c) If the ACQUIRING ASSOCIATION exercises its option with respect to any Leased Office, the RECEIVER shall use its best efforts to assist the ACQUIRING ASSOCIATION in obtaining an assignment or sublease, provided, however, that the RECEIVER shall not pay, nor shall it become obligated to pay, any monies to the ACQUIRING ASSOCIATION, the lessor, or any third party as a part of its effort to assist in effectuating such assignment or sublease.

(d) The ACQUIRING ASSOCIATION shall vacate any Leased Office as to which it does not exercise the ninety (90) day option provided in § 8(b) within ninety (90) days after the

Effective Date, or if the ACQUIRING ASSOCIATION has extended such option for an additional thirty (30) days as provided in § 8(b), within one hundred and twenty (120) days after the Effective Date, unless the ACQUIRING ASSOCIATION negotiates an agreement with the owner or lessor of the Leased Office satisfactory to the RECEIVER, providing for occupation of the Leased Office for a longer period of time, which agreement shall provide for a release of any further obligations of the RECEIVER under the CLOSED ASSOCIATION's lease. If the ACQUIRING ASSOCIATION vacates a Leased Office, it will arrange for the discontinuance or transfer to another location of any safe deposit business conducted at the Leased Office and will take responsibility for the return, transfer or other appropriate disposition of the contents of any safe deposit boxes at such Leased Office. If the ACQUIRING ASSOCIATION elects to occupy any Leased Office for more than fifteen (15) days, it shall provide the RECEIVER with fifteen (15) days written notice of its intention to vacate prior to vacating such premises.

§ 9 <u>Office Space for the RECEIVER</u>. The ACQUIRING ASSOCIATION agrees to provide the RECEIVER, without charge and, if its duties so require, for such reasonable period as the Receiver may request from the date of this Agreement, adequate space, including vault space and furnishings, for the RECEIVER's use in connection with the transfers and transactions required by this Agreement and with the exercise and discharge of its powers and duties as receiver of the CLOSED ASSOCIATION.

§ 10 Litigation; Power of Attorney. In the event that any action at law or in equity in which the RECEIVER has an interest is instituted by any Person against the CLOSED ASSOCIATION, the ACQUIRING ASSOCIATION, or both of them, or against the RECEIVER and either or both of the foregoing as co-defendants, or in which action the RECEIVER joins or is joined as co-defendant, the ACQUIRING ASSOCIATION agrees to file, or to join with the RECEIVER in filing a petition to remove the action to an appropriate court, and hereby authorizes and appoints as its attorney for the purpose of effecting such removal any attorney designated or approved by the RECEIVER to act in that capacity.

§ 11 Rights and Forbearance. The rights, powers, and remedies given to the parties by this Agreement shall be in addition to all rights, powers, and remedies given by any applicable statute or rule of law. Any forbearance, failure, or delay by either party in exercising or partially exercising any right, power, or remedy shall not preclude the further exercise of such right, power, or remedy.

§ 12 Sole Benefit. It is the intention of the parties that this Agreement, the assumption of obligations and statements of responsibilities under it, and all conditions and provisions of it, are for the sole benefit of the RECEIVER and the ACQUIRING ASSOCIATION and for the benefit of no other person. Nothing expressed or referred to in this Agreement is intended to or shall be construed to give any person other than the RECEIVER or

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the ACQUIRING ASSOCIATION any legal or equitable right, remedy, or claim under or with respect to this Agreement or any of its provisions.

§ 13 Successors and Assigns. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective transferees, successors, and assigns, but this Agreement may not be assigned nor may any rights under it be transferred to or vested in any other party through merger, consolidation, or otherwise, without the prior written consent of the CORPORATION.

§ 14 Notices. Any notice, request, demand, or other communication to either of the parties shall be deemed given when received and shall be given in writing and delivered in person or sent by first class mail in a prepaid envelope to such party at its address set forth below or at such other address as such party shall hereafter furnish in writing:

BENJAMIN FRANKLIN FEDERAL SAVINGS
ASSOCIATION
5444 Westheimer
Houston, Texas 77056
Attn: Chief Executive Officer

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
As RECEIVER for Benjamin Franklin Savings
Association
1700 G Street, N.W.
Washington, D.C. 20552
Attention: Special Representative

§ 15 Accounting Principles. Except as otherwise provided in this Agreement, any computations made for the purposes of this Agreement shall be governed by generally accepted

accounting principles as applied in the savings and loan industry, except that where such principles conflict with the terms of this Agreement, any assistance agreement or other agreements to which the ACQUIRING ASSOCIATION and the CORPORATION are parties, including, but not limited to, an agreement to make a contribution or loan, applicable regulations of the BANK BOARD or the CORPORATION, or any resolution or action of the BANK BOARD or the CORPORATION approving, or adopted concurrently with, this Agreement, then this Agreement, such assistance agreement, such regulations, and such resolutions or actions shall govern. In the case of any ambiguity in the interpretation or construction of any provision of this Agreement, such ambiguity shall be resolved in a manner consistent with such assistance agreement, such regulations, and the BANK BOARD's or the CORPORATION's resolutions or actions. If there is a conflict between this Agreement and an assistance agreement or such regulations or resolutions or actions, then such assistance agreement or such regulations or resolutions or actions shall govern.

§ 16 Governing Law. To the extent that Federal law does not control, this Agreement and the rights and obligations under it shall be governed by the law of the State of Texas. Nothing in this Agreement shall require any unlawful action or inaction by either party.

§ 17 Effective Date. This Agreement, and the transfer of the CLOSED ASSOCIATION's assets and secured, deposit, and certain Tax Claim liabilities provided for by this Agreement, shall become effective upon its execution by the parties.

§ 18 Entire Agreement; Severability.

(a) This Agreement, together with any interpretation of it or any understanding agreed to in writing by the parties, constitutes the entire agreement between the ACQUIRING ASSOCIATION and the CORPORATION as RECEIVER, but not in its corporate capacity, in connection with the transactions contemplated by this Agreement, and supersedes all prior agreements and understandings of the parties, excepting only any resolutions or letters approved or adopted contemporaneously with this Agreement by the BANK BOARD or the CORPORATION.

(b) If any provision of this Agreement is invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties.

§ 19 Counterparts; Modification; Headings.

(a) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument, and either party may execute this Agreement by signing any such counterpart.

(b) No modification of this Agreement shall be binding unless executed in writing and signed by the parties or their successors.

(c) Section headings are not to be considered part of this Agreement, are solely for convenience of reference, and shall not affect the meaning or interpretation of this Agreement or any of its provisions.

§ 20 Warranties.

(a) The RECEIVER warrants and represents that it has authority to enter into this Agreement and that as RECEIVER it has full power and authority to transfer the CLOSED ASSOCIATION's assets and secured, deposit, and certain Tax Claim liabilities as provided by this Agreement.

(b) The ACQUIRING ASSOCIATION warrants and represents that all of the transactions contemplated by this Agreement have been or will be authorized by all necessary corporate actions and that it, by its proper officers or agents, has executed this Agreement and shall execute and deliver all instruments, certificates, and other documents that may be necessary or incidental to the performance of this Agreement.

(c) These warranties shall survive the execution, performance, and termination of this Agreement.

§ 21 Continuing Cooperation. The RECEIVER agrees, upon the request of the ACQUIRING ASSOCIATION, to execute and deliver such further instruments and documents of conveyance as shall be necessary or proper to vest in the ACQUIRING ASSOCIATION the RECEIVER's full legal or equitable title to the property transferred to the ACQUIRING ASSOCIATION pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or agents.

 004-58-1958

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION AS RECEIVER FOR BENJAMIN FRANKLIN SAVINGS ASSOCIATION, HOUSTON, TEXAS

Date: June 29, 1989

Attest: _____
Assistant Secretary

By: _____
Special Representative

BENJAMIN FRANKLIN FEDERAL SAVINGS ASSOCIATION

Date: June 29, 1989

Attest: _____

By: _____

Its: Designee, Director, FSLIC

92151210

C

FEDERAL HOME LOAN BANK BOARD

Receiver's Execution of Purchase and Assumption Transaction
Benjamin Franklin Savings Association, Houston, Texas

No. 89-448 P

Date: June 28, 1989

Issued Under Delegated Authority

Recitals

WHEREAS, The Federal Home Loan Bank Board ("Bank Board") (i) has replaced the FSLIC as sole Conservator for Benjamin Franklin Savings Association, Houston, Texas ("Association"), with the FSLIC as sole receiver for the Association ("Receiver"), pursuant to Bank Board Resolution No. 89-448P, dated June 28, 1989, for the purpose of liquidation, (ii) has found that the Association is not a going concern and could continue as a going concern only with financial assistance from the FSLIC, and (iii) has found that the assets of the Association are insufficient to pay the claims of depositors, secured creditors and unsubordinated claims of governmental units for unpaid taxes (other than Federal income taxes); and

WHEREAS, Upon the appointment of the Receiver, the Association is in "default," as such term is defined in § 401(d) of the National Housing Act, as amended, 12 U.S.C. § 1724(d)(1982); and

WHEREAS, The Bank Board has considered a proposed "Acquisition Agreement" between the Receiver and Benjamin Franklin Federal Savings Association, Houston, Texas ("Assuming Association") under which the Assuming Association will purchase from the Receiver substantially all of the assets of the Association and will assume the Association's secured, deposit and certain tax liabilities ("Acquisition") (a copy of which Agreement is in the Minute Exhibit File); and

WHEREAS, The Bank Board has considered a proposed "Receiver's Agreement" between the FSLIC in its corporate capacity and the Receiver pursuant to which the FSLIC in its corporate capacity will purchase from the Receiver certain assets of the Association

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004-52-1960

FEDERAL HOME LOAN BANK BOARD

Receiver's Execution of Purchase and Assumption Transaction
Benjamin Franklin Savings Association,
Houston, Texas

No. 89-1670 P

that have not been purchased by the Assuming Association and will assume certain liabilities and expenses of the Receiver (a copy of which Agreement is in the Minute Exhibit File); and

WHEREAS, The Bank Board has considered staff memoranda, together with accompanying attachments and exhibits (copies of which memoranda are in the Minute Exhibit File), and the balance of the administrative record submitted to it:

Purchase and Assumption

NOW, THEREFORE, IT IS RESOLVED, That, on the basis of the administrative record before the Bank Board, the Bank Board, as operating head of the FSLIC, hereby determines that:

(1) Upon the default of the Association, the only available alternative to the transfer of the assets and liabilities of the Association provided for in the Acquisition Agreement and the Receiver's Agreement is the liquidation of the Association and the payment of insurance on its accounts, resulting in the loss of the savings and loan services provided by the Association to the communities it serves, the suspension for a period of time of all accounts of the Association by the Receiver, and the recovery by accountholders having uninsured funds of only ratable distributions from the liquidation of the assets of the Association;

(2) The execution and implementation of the Acquisition Agreement and the Receiver's Agreement are in the public interest and in the best interests of the Association, its savers, and the FSLIC in its corporate capacity; and

(3) Delay in the execution and implementation of the Acquisition Agreement following the appointment of the Receiver would prevent the sale of assets and assumption of liabilities contemplated thereby from taking place, and result in the liquidation of the Association and the payment of insurance on its accounts; and

FEDERAL HOME LOAN BANK BOARD

Receiver's Execution of Purchase and Assumption Transaction
Benjamin Franklin Savings Association, Houston, Texas

RESOLVED FURTHER, That the Receiver is hereby authorized to sell and transfer substantially all of the assets and the secured, deposit and certain tax liabilities of the Association and to enter into an Acquisition Agreement and a Receiver's Agreement in the forms, or substantially in the forms, of the proposed Agreements, provided that the final form of each Agreement has been approved by the Office of the General Counsel ("OGC"); and

Authority for Receiver to Transfer Assets and Liabilities

RESOLVED FURTHER, That the proposed Acquisition Agreement and Receiver's Agreement are hereby approved; the FSLIC as Receiver for the Association is hereby authorized to sell and transfer to the Assuming Association substantially all of the assets and the secured, deposit and certain tax liabilities of the Association and to enter into an Acquisition Agreement; and the FSLIC as Receiver for the Association and the FSLIC in its corporate capacity are each authorized to enter into a Receiver's Agreement with respect to the Association; and each such Agreement is to be in the form or substantially in the form of the proposed Agreements, provided that the Executive Director or Principal Deputy Executive Director, FSLIC, or the designee of either of them ("Director"), may agree to such changes as do not involve matters of policy, and provided further that the final form of each such Agreement shall be approved by the OGC; and

RESOLVED FURTHER, That the Special Representatives of the Receiver, as designated in or pursuant to Bank Board Resolution No. 89-_____, dated June __, 1989, are hereby authorized to execute, on behalf of the FSLIC as Receiver, an Acquisition Agreement and a Receiver's Agreement with respect to the Association in the forms, or substantially in the forms, of the proposed Agreements, to execute all other documents necessary or desirable to implement the provisions of the Acquisition Agreement and the Receiver's Agreement, or to complete the Acquisition, provided that the Director may agree to any changes in such Agreements and documents in accordance with the

FEDERAL HOME LOAN BANK BOARD

Receiver's Execution of Purchase and Assumption Transaction
Benjamin Franklin Savings Association,
Houston, Texas

No. 89-1670 P

immediately preceding resolving paragraph, and provided further that the final form of each Agreement and document has been approved by the OGC.

By the Federal Home Loan Bank Board

/s/ John F. Ghizzoni

EXHIBIT "E"

004-58-1963

I

FEDERAL HOME LOAN BANK BOARD

Appointment of Conservator for
Benjamin Franklin Federal Savings Association,
Houston, Texas

No. 89-1174 P

Date: June 28, 1989

Issued Under Delegated Authority

Recitals

WHEREAS, The Federal Home Loan Bank Board ("Bank Board") appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator ("Conservator") for Benjamin Franklin Savings Association, Houston, Texas ("Association"); and

WHEREAS, The Bank Board has replaced the Conservator with the FSLIC as receiver ("Receiver") for the Association; and

WHEREAS, The FSLIC as Receiver is authorized by § 406(b)(1)(A)(v) and (vi) and § 406(c)(3)(B) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1729(b)(1)(A)(v) and (vi) and 12 U.S.C. § 1729(c)(3)(B) (1982), as amended, to liquidate the Association in an orderly manner or to make such other disposition of the matter as it deems to be in the best interest of the Association, its savers, and the FSLIC; and

WHEREAS, In order to facilitate the liquidation of the Association, the Bank Board has authorized the organization of a new Federal savings and loan association, Benjamin Franklin Federal Savings Association, Houston, Texas ("New Federal"); and

WHEREAS, The Bank Board has exclusive power and jurisdiction to appoint a conservator for a Federal association, pursuant to § 5(d)(6)(A) or (B) of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. § 1464(d)(6)(A) or (B) (1982); and

WHEREAS, Pursuant to 12 U.S.C. § 1701c(c)(2)(1982), as amended by P.L. 98-479, 98 Stat. 2228 (1984), the Bank Board is authorized to utilize, contract with and act through, any federal agency or