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**Comptroller of the Currency  
Administrator of National Banks**

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Washington, DC 20219

April 1, 1998

**Corporate Decision #98-25  
June 1998**

Joseph T. Green, Esq.  
General Counsel  
TCF National Bank  
801 Marquette Avenue  
Minneapolis, MN 55402

Re: Real estate appraisal activities of North Star Real Estate, Inc. for the general public  
Application Control No. 97-MW-08-0007

Dear Mr. Green:

Pursuant to the OCC's approval of the application of TCF Financial Corp., Minneapolis, Minnesota, to convert its federal savings bank into a national bank ("TCF"), we permitted TCF to retain North Star Real Estate, Inc. ("North Star") for up to two years pending the OCC's determination of the permissibility of North Star's activities under the National Bank Act. See Decision of the Comptroller of the Currency to Approve Applications by TCF Financial Corp., Minneapolis, Minnesota, to Convert Federal Savings Bank Located in Minnesota, Michigan, Illinois, and Wisconsin and to Establish De Novo Banks in Ohio and Colorado and to Engage in Certain Related Transactions, p. 35 (OCC Corporate Decision 97-13) (February 24, 1997). The Corporate Decision indicated that under OCC precedents national banks and their subsidiaries have been permitted to perform real estate appraisals in connection with both the bank's loans and loans made by other financial institutions. Id.

This letter addresses the remaining issue of whether North Star could perform an appraisal for the occasional customer who requests one even though there is no associated loan transaction. TCF represented that such situations constitute less than one percent of North Star's real estate appraisal business, and that no more than ten percent of its requests for real estate appraisals will ever be of this nature. TCF further represented that North Star does not specifically target such persons in its offering of appraisal services; however, turning them away because they are not seeking a loan or another banking product could hurt TCF's reputation for service. To the extent that performing real estate appraisals for these customers is not part of the business of banking, it is nonetheless a permissible use of North Star's retained excess capacity.

The OCC and the courts have long held that a bank may make profitable use of excess capacity if the bank acquired the excess capacity in good faith to meet either its needs or the needs of its

customers. The underlying justification of the excess capacity doctrine is essentially that of avoidance of economic waste. If a bank must leave its asset underutilized, the bank would fail to obtain full economic value from the asset, thus incurring economic waste. However, utilization of the excess capacity permits the bank to reduce the costs of performing those services which are part of the banking business. In turn, this makes its banking business more profitable and competitive. See, e.g., Interpretive Letter No. 811 (Dec. 18, 1997).

For example, in the leading case of Brown v. Schleier, 118 F. 981 (8th Cir. 1902), aff'd 194 U.S. 18 (1904), the national bank leased land on which it constructed a building for its banking activities. Due to its prime location, the land was very valuable as commercial real estate and the bank built an eight-story building from which it leased out several floors for non-banking uses. The court found the bank had the authority take advantage of the economic value of its lease-hold because the bank had acquired the land in good faith. See id. at 984; see also Wingert v. First Nat'l Bank, 175 F. 739 (4th Cir. 1909); Perth Amboy Nat'l Bank v. Brodsky, 207 F.Supp. 785 (S.D.N.Y. 1962).

Similarly, the OCC has approved national banks' sale of excess capacity in a variety of situations and circumstances. 12 C.F.R. § 7.1019; Interpretive Letter No. 811, supra (excess capacity in printing services); Interpretive Letter No. 742 (Aug. 19, 1996), reprinted in [1996-97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,106 (excess capacity in Internet access); Interpretive Letter No. 677 (June 28, 1995), reprinted in [1994-95 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (excess capacity in equipment, personnel, and facilities for production and distribution of non-financial software); No-Objection Letter No. 89-04 (July 11, 1989), reprinted in [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶83,061 (excess capacity in messenger services); Interpretive Letter No. 137 (December 27, 1979), reprinted in [1981-82] Fed. Banking L. Rep. (CCH) ¶ 85,218 (excess capacity in financial counseling services).

As mentioned, TCF represented that less than one percent of North Star's real estate appraisal business comes from customers who are not also borrowing money, and that no more than ten percent of the requests for real estate appraisals will ever come from these customers. TCF further represented that North Star does not target such persons in its offering of appraisal services. This demonstrates that the acquisition of North Star with its attendant excess capacity was made in good faith to meet the needs of the bank, its borrowers, and correspondent lending institutions, not the needs of the occasional customer who requests an appraisal unconnected to obtaining a loan. Therefore, North Star's appraisal capabilities were acquired in good faith for banking purposes, and North Star may market and offer its excess capacity to those customers who request an appraisal even though there is no associated loan transaction.

Based on the foregoing representations and analysis, I conclude that North Star may perform real estate appraisal services for customers who are not also seeking a loan secured by real estate, provided North Star continues to comport with TCF's representations.

If you have any questions, please contact Stephen Lybarger, Licensing Expert, Washington Directed Licensing, at (202) 874-5060, or Steven V. Key, Attorney, Bank Activities and Structure Division, at (202) 874-5300.

Sincerely,

/s/

Julie L. Williams  
Chief Counsel