

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
Fred N. Coulson, III)
Former Director of The)
Overland Park Savings and)
Loan Association, Overland)
Park, Kansas)

Re: Resolution No. KC-92-29
Dated: October 16, 1992

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

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, and Fred N. Coulson, III ("Coulson") former director of The Overland Park Savings and Loan Association, Overland Park, Kansas ("Overland Park Savings" or the "Institution") and former director of the Institution's service corporation, Santa Fe Financial Corporation ("Santa Fe"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it and discovered during the course of its formal examination, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Coulson, pursuant to Section 407(e) of the National Housing Act of 1934 ("NHA"), 12 U.S.C.A. § 1730(e), and Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C.A. §1818(b) (1989 and West Supp. 1992). Coulson desires to cooperate

with the OTS and to avoid the time and expense of such administrative litigation. Without admitting and while specifically disputing the statements, conclusions and terms herein, Coulson hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating any civil or administrative proceedings against Coulson with respect to the matters known or discovered by the OTS during the course of its formal examination of Overland Park Savings pursuant to Resolution No. TOP 91-21, and the matters outlined in the civil money penalty letter addressed to Coulson and dated June 5, 1991. The OTS has determined that it is appropriate and in the best interest of the public to execute this Stipulation and Consent to Issuance of an Order to Cease and Desist for Restitution and Other Affirmative Relief ("Stipulation") and to issue the attached Order to Cease and Desist for Restitution and Other Affirmative Relief ("Order").

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

(a) The Institution is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C.A. § 1813(b) (1989 and West Supp. 1992) and Section 2(4) of the Home Owners' Loan Act, as amended by Section 301 of the FIRREA, 12 U.S.C.A. § 1462(4) (West Supp. 1992). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by the FIRREA, 12 U.S.C.A. § 1813(c).

(b) Until August 9, 1989, the accounts of the Institution were insured by the Federal Savings and Loan Insurance Corporation

("FSLIC") pursuant to Section 403(b) of the NHA, 12 U.S.C.A. § 1726(b), by reason of which it was an "insured institution" within the meaning of the NHA.

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

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

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

(f) The Director of the OTS has the authority to bring administrative cease and desist proceedings directing restitution and other affirmative relief against persons participating in the conduct of the affairs of the Institution and institution-affiliated parties, pursuant to Section 5(d)(1)(A) of the HOLA, as amended by Section 301 of the FIRREA, 12 U.S.C.A. §1464(d)(1)(A) and Section 8(b) of the FDIA, as amended by the FIRREA, 12 U.S.C.A. § 1818(b).

(g) Coulson was at all times relevant hereto a director of the Institution and Santa Fe. Accordingly, Coulson is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C.A. § 1813(u), and as such, is subject to the authority of the OTS to maintain cease and desist proceedings pursuant to Section 8(b) of the FDIA, 12 U.S.C.A. §1818(b).

3. Pertinent Allegations.

Based upon information reported to it and gathered during the course of its formal examination of Overland Park Savings, the OTS reviewed two real estate sales transactions undertaken by Overland Park Savings and/or Santa Fe. Based upon that review and investigation, the OTS is of the opinion that Coulson's participation and involvement in these transactions, and his receipt of fees, commissions and a "profit participation" from Santa Fe and/or the Institution constituted conflicts of interest, unsafe or unsound practices, and caused or brought about violations of OTS regulations. The OTS alleges that:

(a) On January 20, 1988, Coulson and his business partner entered into a contract to purchase the Westwood Plaza Towers located at 1900 West 47th Place, Westwood, Kansas ("Westwood Plaza") from the J. E. Dunn Construction Company ("Dunn"). On January 21, 1988, Coulson, while a director of Santa Fe and the Institution, and his business partner offered Santa Fe the opportunity to purchase the Westwood Plaza property from Dunn on the condition that Coulson and his business partner receive a \$150,000 real estate commission from Dunn, and further, that

Coulson and a partner would be entitled to receive from Santa Fe forty percent (40%) of any profits recognized upon a subsequent sale of the property by Santa Fe.

(b) On January 21, 1988, the purchase proposal was approved by Santa Fe's board of directors (with Coulson abstaining). On December 14, 1988, almost a year later, Santa Fe closed on the purchase of the Westwood Plaza property and Dunn paid director Coulson and his business partner a \$150,000.00 commission out of the sale proceeds. Thereafter, Santa Fe entered into various market rate fee arrangements with Director Coulson and his affiliated companies to manage, renovate and serve as leasing agent on the property for Santa Fe. However, at no time prior to the purchase did Santa Fe or Coulson enter into any written agreement or written understanding concerning any profit distribution in the event of a subsequent sale. Moreover, at no time did the Institution, Santa Fe or Coulson obtain the prior written approval of the OTS as required by 12 C.F.R. §563.41 (1989).

(c) On September 1, 1989, the Westwood Plaza property was sold to the Midwest Organ Bank ("MOB") for a price at which Santa Fe recognized an \$849,563.00 accounting gain. MOB's purchase of the Westwood Plaza property was conditioned upon Santa Fe's purchase of MOB's property. MOB's purchase of the Westwood Plaza property was financed by Overland Park Savings.

(d) As a part of the Westwood Plaza property sale to MOB, Santa Fe approved the purchase of the MOB's property located at 43rd Street and Wornall Road, Kansas City, Missouri ("43rd Street property") for \$1,000,000, without a prior appraisal of the

property. Shortly after the acquisition, Santa Fe demolished the property and expended funds in various municipal zoning proceedings for a total additional cost of \$200,000.00 bringing the total amount expended on the property to \$1,200,000.00.

(e) In September and October 1989, Santa Fe paid Coulson and his partner \$339,825.00, purportedly representing their share of the "profits" realized by Santa Fe from the sale of the Westwood Plaza property to MOB. No-written agreement existed at this time obligating Santa Fe to pay these funds to director Coulson and his business partner.

(f) In December 1989, three months after the sale of the Westwood Plaza property to MOB, Coulson, his business partner, and Santa Fe (by and through Wilson Siemens) prepared and signed a written agreement setting forth the profit distribution to be paid to director Coulson and his business partner as originally contemplated one year earlier. Although the document was prepared and executed in December 1989, it was dated December 14, 1988.

(g) During the course of an OTS examination in 1991, the OTS examiners ordered an appraisal of the 43rd Street property to be performed by an independent appraiser. The appraiser valued the 43rd Street property at \$500,000.00 as of September 1, 1989. Thus, the OTS directed the Institution to recognize a \$700,000.00 loss on Santa Fe's purchase of the 43rd Street property.

(h) The OTS examiners further concluded that the two real estate transactions (i.e., the Westwood Plaza sale and the 43rd Street purchase) were linked transactions and, pursuant to generally accepted accounting principles, directed a reversal of the Institution's recognition of the \$849,563.00 gain on the sale of the Westwood Plaza property.

The OTS is of the opinion that director Coulson's participation in the Westwood Plaza and 43rd Street real estate transactions, his failure to cause the Institution to obtain prior OTS approval of his profit participation interest, his execution of a written agreement reflecting its execution to have been one year earlier, his failure to cause Santa Fe to obtain an appraisal of the 43rd Street property prior to Santa Fe's purchase, and his receipt of commissions, fees and profit distributions under these facts and circumstances, caused, brought about and resulted in violations of OTS regulations, and constituted unsafe or unsound practices and conflicts of interest in which he was personally enriched, and the Institution recognized significant loss.

4. Consent. Without admitting and while specifically disputing the need or basis therefor, Coulson consents to the issuance by the OTS of the Order. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of 12 U.S.C.A. § 1818(b).

5. Finality. The Order is issued under Section 8(b) of the FDIA, as amended, 12 U.S.C.A. § 1818(b) (1989 and West Supp. 1992). Upon its issuance, it shall be a final order, effective and fully

enforceable by the OTS under the provisions of Section 8(i) of the FDIA, as amended, 12 U.S.C.A. § 1818(i) (1989 and West Supp. 1992).

6. Waivers. Coulson waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C.A. § 1818(h), or otherwise to challenge the validity of the Order.

This Stipulation and the Order are issued solely to settle the matters arising from the formal examination of The Overland Park Savings and Loan Association conducted pursuant to Resolution No. TOP 91-21, dated August 2, 1991 and those matters outlined in the OTS civil money penalty letter to Coulson dated June 5, 1991, and are not intended to nor shall they be construed to have the effect of, limiting the right or authority of any other governmental or administrative agency, including the Resolution Trust Corporation, to initiate or pursue any other action, civil or otherwise, against Coulson. Further, this Stipulation and Order are not intended to nor shall they be construed to have the effect of, limiting the right or authority of the OTS to initiate or pursue any other action, civil or otherwise, against Coulson for conduct that occurs or is first disclosed to or discovered by the OTS after the entry of the Order.

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Re: Resolution No. KC-92-29
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ORDER TO CEASE AND DESIST FOR RESTITUTION
AND OTHER AFFIRMATIVE RELIEF

WHEREAS, Fred N. Coulson, III, ("Coulson") former director of The Overland Park Savings and Loan Association ("Overland Park Savings" or "Institution") and its service corporation, Santa Fe Financial Corporation ("Santa Fe") has executed a Stipulation and Consent to Issuance of an Order to Cease and Desist for Restitution and Other Affirmative Relief ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Region; and

WHEREAS, Coulson has consented and agreed in the Stipulation to the issuance of this Order to Cease and Desist for Restitution and Other Affirmative Relief ("Order"), 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, ("FIRREA"), 12 U.S.C.A. § 1818(b) (1989 and West Supp. 1992);

NOW THEREFORE, IT IS ORDERED that:

1. From and after the effective date of this Order, Coulson shall be liable to make payment to Overland Park Savings and the OTS in the total amount of \$1,303,014. This sum shall represent affirmative action in the form of restitution and/or reimbursement for the following:

(a) reimbursement of \$339,825.00, representing the full amount of "profit participation funds" paid to Coulson and his business partner by Santa Fe on the sale of the Westwood Plaza Towers property located at 1900 West 47th Place, Westwood, Kansas ("Westwood Plaza Towers");

(b) repayment of \$150,000.00, representing the real estate commission paid to Coulson and his business partner on the purchase of the Westwood Plaza Towers property by Santa Fe;

(c) restitution of \$693,189.00, representing the difference between Santa Fe's current book value on the property located at 43rd Street and Wornall Road, Kansas City, Missouri ("43rd Street property") and the cost of acquiring and renovating the 43rd Street property; and

(d) reimbursement of \$120,000.00, representing the costs and expenses incurred by the OTS in the performance of its formal examination of Overland Park Savings, Santa Fe and their affairs.

2. Coulson shall make payment of the foregoing restitution and reimbursement in the following manner and by and through the following means:

(a) Within five (5) days from the date of issuance of this Order, Coulson shall pay or cause to be paid to Overland Park Savings the sum of \$120,000.00. At Coulson's sole discretion, this obligation may be satisfied, in part, by a written assignment from Coulson to Overland Park Savings of all rights and interests (including those held or claimed by any third parties) to the \$50,000.00 fee owing to Coulson for his services on the Santa Rosa real estate transaction and currently held in escrow. The remaining \$70,000.00 due and owing, or the entire \$120,000.00 in the event Coulson elects not to or is unable to assign the Santa Rosa commission, shall be paid by Coulson in the form of a certified or cashier's check made payable to Overland Park Savings and tendered to the Regional Deputy Director of the OTS Kansas City Area Office;

(b) Within forty-five (45) days from the date of issuance of this Order, Coulson shall purchase or cause to be purchased from Santa Fe the 43rd Street property for the cash purchase price of \$1,200,000.00. Upon consummation of the sales transaction, Coulson shall receive a credit in the amount of \$693,189.00 as partial satisfaction of his restitution and reimbursement obligations as set forth in this Order. Coulson shall not, directly or indirectly, seek or accept any loans, advances, payments or other

funds or assets from Overland Park Savings, or any of its subsidiaries, affiliates or holding company thereof, to satisfy this purchase obligation.

(c) Coulson shall receive a dollar-for-dollar credit against his restitution obligations as set forth in this Order for any funds or other assets received by or paid to Overland Park Savings from or by Wilson Siemens or other persons or entities pursuant to orders issued by the OTS which pertain to the items set forth in paragraph 1 of this Order.

(d) Within thirty (30) days from the date of issuance of this Order, to secure the payment of the remainder of his restitution obligations as set forth in this Order, Coulson shall grant and convey, or cause his affiliates to grant and convey, a valid and binding assignment of proceeds or other security interest in favor of Overland Park Savings on certain of his assets selected by the OTS; provided, however, that Coulson shall not be obligated to grant an assignment of proceeds or other security interest on any individual asset if doing so would result in or create an event of default on the obligations currently outstanding on that asset. The OTS will notify Coulson within ten (10) days from the date of issuance of this Order which assets have been selected. Within the remaining thirty-day time frame, Coulson shall execute any and all documents deemed necessary by Overland Park Savings to: (i) create the valid and binding assignment of proceeds or security interest(s) in the assets selected; and (ii) accomplish the perfection of such assignment(s) or security interest(s) in each of the assets. Provided, however, any restitution and/or

reimbursement remaining to be paid pursuant to this Order shall be payable only out of any subsequent sale proceeds received by Coulson or any of his affiliates in excess of the presently existing liens on the properties. Provided, further, any net proceeds (whether in cash or other assets) recovered from the sale of any such Coulson properties shall be divided between the Institution and Coulson on a 75%-25% basis, respectively. In calculating the division of proceeds between the Institution and Coulson, no reduction in the amount of sale proceeds shall be made for any fees or charges owing to Coulson or any of his affiliates in connection with any such sale transaction (such as a real estate agent's fee or broker's fee) unless and until the full amount of any restitution and/or reimbursement required by this Order has been paid.

3. Coulson shall promptly respond to any request from OTS for documents or other information that the OTS reasonably requests to determine compliance with this Order.

4. The Stipulation is made a part hereof and is incorporated herein by this reference.

5. This Order is subject to the provisions of Section 8(i) of the FDIA, 12 U.S.C.A. §1818(i), and shall, unless otherwise noted by the terms of the Order, become effective on the date it is issued.

6. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal

