

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

Anne Ralls

Director of The
Overland Park Savings and
Loan Association, Overland
Park, Kansas

Re: Resolution No. KC-92-31
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 Anne Ralls ("Ralls"), director of The Overland Park Savings and Loan Association, Overland Park, Kansas ("Overland Park Savings" or the "Institution") and 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 Ralls, 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). Ralls 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, Ralls hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating any civil or administrative proceedings against Ralls 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 Ralls 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 a 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 Ralls, 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) Ralls was at all times relevant hereto a director of the Institution and Santa Fe. Accordingly, Ralls 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 Ralls' approval of these transactions constituted unsafe or unsound practices, and caused or brought about violations of OTS regulations. The OTS alleges that:

(a) On January 20, 1988, Director Fred N. Coulson ("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 \$150,000.00 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 Ralls voting for approval and 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 (1988).

(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 (with Ralls consent) the purchase of the MOB's property located at 43rd Street and Wornall Road, Kansas City, Missouri ("43rd Street property") for \$1,000,000.00 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 property 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 Ralls' approval of the Westwood Plaza and 43rd Street real estate transactions, her failure to ensure prior OTS approval of Coulson's profit participation interest, and her approval of the 43rd Street property purchase by Santa Fe without a prior appraisal, brought about and resulted in violations of OTS regulations, and constituted unsafe or unsound practices in which the Institution recognized significant loss.

4. Consent. Without admitting and while specifically disputing the need or basis therefor, Ralls consents to the issuance by the OTS of the Order. She 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. Ralls waives her right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C.A. § 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 Ralls 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 Ralls. 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 Ralls for conduct that occurs or is first disclosed to or discovered by the OTS after the entry of the Order.

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In the Matter of
Anne Ralls
Director of The Overland
Park Savings and Loan
Association, Overland
Park, Kansas

**ORDER TO CEASE AND DESIST FOR RESTITUTION
AND OTHER AFFIRMATIVE RELIEF**

WHEREAS, Ralls 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 Ralls shall cease and desist from any violation of, or the aiding and abetting of any violation of:

- a. Section 563.41(b) of the Rules and Regulations of the Office of Thrift Supervision ("OTS Regulations"), 12 C.F.R. §563.41(b)(1992);
- b. Section 563.43(b) of the OTS Regulations, 12 C.F.R. §563.43(b) (1992);
- c. Section 563.160(c) & (d) of the OTS Regulations, 12 C.F.R. §563.160(c) & (d) (1992);
- d. Section 563.170(c) of the OTS Regulations, 12 C.F.R. §563.170(c) (1992); and
- f. Section 563.233 of the OTS Regulations, 12 C.F.R. §563.233 (1992).

IT IS HEREBY FURTHER ORDERED that:

1. From and after the effective date of this Order, Ralls shall be liable to make restitution to Overland Park Savings in the amount of \$693,189.00, representing the difference between Overland Park Savings' 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.

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

Within forty-five (45) days from the date of issuance of this Order, Ralls 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, Ralls shall receive a credit in the amount of \$693,189.00 as full satisfaction of her restitution and reimbursement obligations as set forth in this Order. Ralls 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.

3. Ralls shall comply in all respects with 12 C.F.R. §§ 563.41 and 563.43. Prior to consideration or approval of any loan to, or other transaction with, an affiliated person, Ralls shall ensure that as a director she receives full, complete and accurate information concerning the proposed transaction. When issues arise that cause Ralls to be unsure about statutory and/or regulatory compliance concerning these transactions, Ralls shall seek and obtain written advice and guidance of competent legal counsel to determine whether a proposed transaction complies with applicable regulatory requirements, and whether prior regulatory notification or approval of the proposed transaction is required.

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