

UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY

In the Matter of )  
JAMES D. McNICHOLAS, )

A former director of )  
Gibraltar Savings Association, )  
Houston, Texas, and First Texas )  
Savings Association, Dallas, Texas. )

OTS Order No. AP-  
92-170

Dated: December 29, 1992

CONSENT TO ENTRY OF CEASE AND DESIST ORDER

The Office of Thrift Supervision ("OTS"), by and through its Acting Director, Jonathan L. Fiechter, and JAMES D. McNICHOLAS ("RESPONDENT"), hereby stipulate and agree as follows:

1. The OTS, based upon an investigation into the affairs of Gibraltar Savings Association of Houston, Texas ("Gibraltar"), and First Texas Savings Association of Dallas, Texas ("First Texas"), has determined that grounds exist for the issuance of a Notice of Charges ("NOTICE") pursuant to Sections 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act, P.L. 101-73 (Aug. 9, 1989) ("FIRREA"), 12 U.S.C. §§ 1818(b). RESPONDENT desires to resolve all claims asserted or that could have been asserted by the OTS as of the date of the Order to Cease and Desist Order ("ORDER") concerning the conduct of the affairs of First Texas or Gibraltar. Therefore, without admitting or denying

the allegations set forth in the NOTICE, RESPONDENT hereby, without further notice, stipulates and consents to the entry of the ORDER in the form attached herewith, pursuant to FDIA Sections 8(b), 12 U.S.C. §§ 1818(b).

2. Gibraltar and First Texas, which were operated under common direction and control and are referred to herein jointly as "Gibraltar/First Texas," were "savings associations" within the meaning of Section 2 of the Home Owners' Loan Act, 12 U.S.C. § 1462, and "insured depository institutions" within the meaning of Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

3. RESPONDENT, as a former officer and/or director of Gibraltar/ First Texas, was a "person participating in the conduct of the affairs" of Gibraltar/First Texas, as that term is used by 12 U.S.C. § 1464(d)(2)(A) and § 1730(e)(1), and was an "institution-affiliated party" as defined in FDIA Section 3(u), 12 U.S.C. § 1813(u).

4. Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of OTS is the "appropriate Federal banking agency" with jurisdiction over Gibraltar/First Texas and RESPONDENT. The Director of OTS has the authority to bring a cease and desist proceeding against RESPONDENT pursuant to Sections 8(b) of the FDIA, 12 U.S.C. §§ 1818(b), and the RESPONDENT is subject to the authority of the OTS to initiate and maintain such proceedings.

5. RESPONDENT acknowledges and states that he enters into this Consent willingly and without any coercion or promises of any kind from the OTS or any officer, attorney, agent or employee

thereof, except as stated herein, in the ORDER or in the documents executed by RESPONDENT and the Federal Deposit Insurance Corporation ("FDIC") in connection with the settlement of the FDIC's claims against RESPONDENT.

6. With respect to the NOTICE, RESPONDENT waives his rights to a hearing, all post-hearing proceedings, and the entry of findings of fact and conclusions of law under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 554-557, FDIA Sections 8(b), 12 U.S.C. §§ 1818(b), and the OTS Rules of Practice and Procedure in Adjudicatory Proceedings, 12 C.F.R. §§ 509.1 et. seq., or any other applicable provision of law.

7. RESPONDENT waives his right to appeal the ORDER pursuant to FDIA Section 8(h), 12 U.S.C. § 1818(h), or any other applicable provision of law.

8. RESPONDENT, by his signature hereto, without admitting or denying the allegations set forth in the NOTICE, agrees to the terms of this Consent and the attached ORDER, and undertakes and agrees to comply with this Consent and ORDER.

9. The ORDER is entered against RESPONDENT pursuant to Section 8(b) of the FDIA, 12 U.S.C. §§ 1818(b), and upon its issuance by OTS, the ORDER shall be a final order, effective and fully enforceable by OTS pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

10. RESPONDENT acknowledges that this Consent and the accompanying ORDER are entered into and executed by OTS in reliance on the financial statements and affidavits provided by RESPONDENT. Concurrent with the execution of this Consent,

RESPONDENT shall submit an affidavit, executed under oath by RESPONDENT and subject to the penalties for false statements and perjury under 18 U.S.C. §§ 1001 and 1621, stating, to the best of his knowledge and belief after due inquiry, that the financial statement of March, 1992 was true and correct when made and that as of the date of this Consent no material change in RESPONDENT's financial condition has occurred since Mar 20, 1992. RESPONDENT stipulates and agrees that a falsely sworn affidavit constitutes a violation of the ORDER.

11. Provided that RESPONDENT is in full compliance with paragraph one of the ORDER, the OTS agrees to forebear from bringing any further enforcement proceedings against the RESPONDENT pursuant to 12 U.S.C. § 1818(b), or other applicable law or regulation, based on any claims asserted or that could have been asserted by the OTS as of the date of the ORDER concerning the conduct of the affairs of First Texas or Gibraltar, their parent holding companies, their affiliates or their subsidiaries, including without limitation the following: (a) any claim relating to or arising out of the NOTICE or the acquisition or development of the Flying M Ranch; and (b) the following loans made by First Texas: (1) Loan No. 496 ("Park/Park"), (2) Loan No. 723 ("Park/Park JV/JV"), (3) Loan No. 581 ("Riverchase"), (4) Loan No. 619 ("720 Limited Partnership (RMB Land Loans)"), (5) Loan No. 24-40644 ("South Lakeview (RMB Land Loans)"), and (6) Loan No. 582 ("The Concourse"); (c) the following loans made by Gibraltar: (1) Loan No. 301-853909 ("Wilcrest Green"), (2) Loan No. 301-873006 ("Clayton Oaks"); (3) Loan No. 301-872628 ("Deerbrook Crossing"),

(4) Loan No. 301-872834 ("Westpark Lakes"), (5) Loan No. 240-872941 ("Nine Bar"), (6) Loan No. 325601-155390 ("Circle C Ranch Personal Loan"), and (7) Loan No. 301-861-506 ("LYMARCO"); and (d) the following loan made by First Texas and Gibraltar: Loan No. 40610 ("Hardy Toll Road"). Nothing in the ORDER, the Consent or this forbearance shall preclude OTS from bringing any action for enforcement of the ORDER or the Consent, nor from bringing any action against persons other than RESPONDENT based on the claims or transactions above-described, nor from OTS bringing any action against RESPONDENT based on claims other than those asserted or that could have been asserted as above-described. Furthermore, the Consent, the ORDER, and the payment by the RESPONDENT of any monies, do not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of the RESPONDENT that arise pursuant to this action or otherwise, and that may be or have been brought by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation or any governmental entity other than the OTS.

WHEREFORE, in consideration of the foregoing and intending to be legally bound thereby, the OTS, by and through its Acting Director, Jonathan L. Fiechter, and RESPONDENT intentionally and knowingly executes this Consent.

/s/

James D. McNicholas, Respondent

Signed this 23<sup>d</sup> day of December, 1992

OFFICE OF THRIFT SUPERVISION

By:

/s/

Jonathan L. Fiechter  
Acting Director

Signed this 21<sup>st</sup> day of December, 1992