

95265 Rosemary Stewart OGC

SUPERVISORY AGREEMENT

This Supervisory Agreement ("Agreement") is made and is effective this 13th day of January, 1989, by and between Mid Kansas Federal Savings and Loan Association of Wichita, Wichita, Kansas, FHLBB No. 02865 ("Institution" or "Association"), and the Federal Home Loan Bank Board ("FHLBB").

WHEREAS, the board of directors of the Institution has reviewed the operations and financial condition of the Institution and finds that the present condition of the Institution justifies and requires extraordinary action by the directors of the Institution for the benefit of the Institution and its depositors, other creditors, and borrowers; and

WHEREAS, the Institution's board of directors acknowledges the interest of the Federal Savings and Loan Insurance Corporation ("FSLIC"), as the insurer of the savings accounts of the Institution, and the supervisory rights, powers, and authority of the FHLBB, as the operating head of the FSLIC, with respect to the Institution under the statutes and regulations that govern the operations of the Institution; and

WHEREAS, the FHLBB is of the opinion that as of September 30, 1987, the Institution has violated 12 C.F.R. Section 563.13 to which the Institution is subject, thereby providing grounds for the initiation of cease-and-desist proceedings against the Institution by the FHLBB; and

WHEREAS, in the interest of regulatory compliance and cooperation, the Institution is willing to enter into this

Agreement to avoid the initiation of such cease-and-desist proceedings; and

WHEREAS, the FHLBB is willing to forbear at this time from the initiation of cease-and-desist proceedings as the result of the Institution's failure to meet its regulatory capital requirement in accordance with Section 563.13 of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation ("Insurance Regulations") (12 C.F.R. Section 563.13) as long as the Institution is in compliance with this Agreement;

NOW, THEREFORE, in consideration of the FHLBB's above-stated forbearance, it is agreed between the parties hereto as follows:

1. For the purposes of this Agreement, except as otherwise indicated, the following definitions shall apply:

a. a "set" is a group of loans, participations, investments, securities, or other assets related, by being sold or pledged to, purchased from, or exchanged with any persons, entities, or institutions acting together in a single transaction;

b. "invest in" means to make, originate, purchase, acquire, guarantee, refinance, modify, extend, renew, or to commit to do any of these;

c. "transfer" means to sell, assign, pledge, exchange, or to commit to do any of these;

d. "real estate investment" means the net book value of real estate purchased, acquired by foreclosure or deed in lieu thereof, or owned in any manner, inclusive of any expenditures incurred in

connection with holding or improving such real estate and following adjustment for any loss reserves or allowances.

2. Except for existing legally binding commitments and investments that qualify as liquid assets under Section 523.10 of the Regulations for the Federal Home Loan Bank System, 12 C.F.R. Section 523.10 (1988), without prior written approval of the Supervisory Agent for the Federal Home Loan Bank of Topeka (Supervisory Agent), the Institution shall not, and shall not allow any wholly-owned or majority-owned subsidiary or affiliate of the Institution to:

a. engage in forward commitments, futures transactions, or financial options transactions as defined in Sections 563.17-3, 563.17-4, and 563.17-5 of the Insurance Regulations, 12 C.F.R. Sections 563.17-3, 563.17-4 and 563.17-5 (1988);

b. invest in any loans or contracts secured by real estate or participations therein (including any acquisition, construction and development loans) or any set of such loans or participations, except loans made at current market interest rates and terms which are:

- (1) to finance the bona fide purchase of, or custom construction of pre-sold, 1-4 family residences secured by first liens on such properties; or
- (2) to refinance loans on existing 1-4 family residences secured by first liens on such properties; or
- (3) to be secured by second liens on existing 1-4 family residences where the loan to value ratio

of the first and second liens combined does not exceed 80%; or

- (4) to finance residential real estate other than 1-4 family residences where the loan to value ratio does not exceed 80% and such loan does not exceed One Million Dollars (\$1,000,000); provided, however, loans which exceed the limitations contained in Section 563.9-3 of the Insurance Regulations shall require formal application for waiver of the limitation;
- (5) to refinance residential real estate other than 1-4 family residences if such loan does not exceed One Million Dollars (\$1,000,000); provided, however, loans which exceed the limitations contained in Section 563.9-3 of the Insurance Regulations shall require formal application for waiver of the limitation;
- (6) to finance nonresidential real estate where the loan to value ratio does not exceed 80% and such loan does not exceed One Million Dollars (\$1,000,000); provided, however, loans which exceed the limitations contained in Section 563.9-3 of the Insurance Regulations shall require formal application for waiver of the limitation;

(7) to refinance nonresidential real estate if such loan does not exceed One Million Dollars (\$1,000,000); provided, however, loans which exceed limitations contained in Section 563.9-3 of the Insurance Regulations shall require formal application for waiver of the limitation;

c. invest in any real estate investment or set of such investments unless such investment or set of investments is made in compliance with 12 C.F.R. Section 563.9-8 (1988);

d. transfer any real estate investment (i.e. real estate owned) or set of such investments with a net book value in excess of One Million Dollars (\$1,000,000), or, irrespective of the foregoing sum, the loss to be recognized upon transfer exceeds the greater of 15 percent of the net book value or Fifty Thousand Dollars (\$50,000);

e. invest in or transfer any security or set of securities in excess of Two Hundred Thousand Dollars (\$200,000); except mortgage-backed securities issued by the Federal Home Loan Mortgage Corporation ("FHLMC"), Government National Mortgage Association ("GNMA"), or the Federal National Mortgage Association ("FNMA");

f. transfer any loan secured by real estate or participation therein or any set of such loans or participations if the net book value of any such loan or participation exceeds Seven Hundred Fifty Thousand Dollars (\$750,000), except loans made at current market interest rates and terms to finance bona fide purchases of, or refinance existing owner-occupied 1-4 family residences secured

by a first lien on such residences; and except loans secured by 1-4 family residences conforming to FNMA, GNMA and FHLMC guidelines purchased through the secondary market;

g. invest in or transfer commercial loans or letters of credit, whether secured or unsecured, with a book value in excess of One Hundred Thousand Dollars (\$100,000); provided, however, investments which exceed the limitations contained in Section 563.9-3 of the Insurance Regulations shall require formal application for waiver of the limitation;

h. borrow any money other than from a Federal Home Loan Bank; except as otherwise authorized by this Agreement;

i. except for individual merit increases in accordance with its standard personnel policy in effect at the time this Agreement is presented by the Supervisory Agent for execution, and normal periodic employee salary and wage increases scheduled prior to the effective date of this Agreement and that comply with Section 563.17 of the Insurance Regulations, 12 C.F.R. Section 563.17 (1988), and FHLBB Memorandum R-42, make any increase in excess of 5%, on an annualized basis, in the rate of compensation to any of its directors, officers, employees, agents, or other representatives, or agree to do so. Notwithstanding any other provision of this subparagraph, the Institution may increase the compensation of non-officer employees if the compensation of such employee before any increase does not exceed Fifty Thousand Dollars (\$50,000) and the aggregate increase or increases for any employee do not exceed ten percent (10%) during any calendar year;

j. employ or appoint any person to serve as an officer, director, or senior manager which is not so employed or appointed as of the date of this Agreement; employ any person at a rate of compensation which, on an annualized basis, exceeds Fifty Thousand Dollars (\$50,000) per year; employ any person pursuant to an agreement that is not terminable at the will of the employer and that otherwise does not comply with Section 563.39 of the Insurance Regulations, 12 C.F.R. Section 563.39 (1988); or enter into or amend or renew any collective bargaining agreements, pension or profit sharing, bonus, severance pay, retirement, fringe benefit, or other employee benefit plans, or other employment contracts with any employee, director, or officer;

k. enter into, renew or revise any contractual arrangement with any officer, director, controlling person, affiliate, subsidiary, affiliated person, consultant, or agent for or of the institution or any of its subsidiaries;

l. invest in any service corporation or any subsidiary thereof or finance subsidiary. For the purposes of this subparagraph, "invest in" shall include, but is not limited to, the making of investments in securities issued by such entities, and the extensions of credit to, or the guaranteeing of the debt of, such entities;

m. enter into any purchase or repurchase agreement obligation arising from a transfer of government securities except as may otherwise be permitted by this Agreement;

n. declare or pay cash or stock dividends on common or preferred stock, if in the stock form of organization;

o. enter into any form of a binding letter of intent with a proposed acquirer of the Institution;

p. enter into (or commit to enter into) any transactions involving any securities of which an integral part is a mortgage derivative financial instrument. Such derivatives shall include, but not be limited to, REMIC or collateralized mortgage obligation (CMO) residual investments, and interest-only or principal-only stripped securities;

q. purchase, invest in, commit to invest in, or otherwise deal in securities which are not rated as being of 'investment grade' (i.e., high yield or "junk" bonds) by any major financial rating service; and

r. enter into any transaction which does not require inclusion on the balance sheet of the Institution under current or future generally accepted accounting principles.

3. On or before January 31, 1989, the Institution shall submit an annual operating plan ("Operating Plan") which details projected business strategies, budget assumptions, and operations for the Institution and its subsidiaries through September 30, 1989, in a form acceptable to the Supervisory Agent. The Operating Plan shall be updated and revised as of October 1, 1989 and prepared annually thereafter and should include pro forma financial statements (with relevant assumptions) for the fiscal year, or part thereof, covered by the plan and should be consistent with providing sound and economical home financing and shall incorporate, as appropriate, the provisions of this Agreement. In

addition, the Operating Plan shall incorporate the following plans, policies, and procedures or guidelines:

- a. the interest-rate-risk- management policy required by Section 563.17-6 of the Insurance Regulations; and
- b. a plan to restore regulatory capital to the level required by Section 563.13(b) of the Insurance Regulations.

The Operating Plan, before implementation, shall be subject to the review and approval of the Supervisory Agent, and any material deviations from the Operating Plan once approved shall require the prior written approval of the Supervisory Agent. The board of directors of the Institution shall review and approve said Operating Plan. Upon approval of the Operating Plan, the association will prepare, on a quarterly basis, written reports containing a comparison of the Institution's year-to-date operating results against the projected results in the Operating Plan as of the end of each calendar quarter. If the actual operating results fail to meet the projected results of the Operating Plan in any material respect, the report shall include an explanation of such deviation and a specific description of the measures that have been implemented or proposed to correct and/or abate any adverse deviations.

4. The Institution shall use its best efforts to discourage the acceptance or renewal of any uninsured deposit.

5. The Institution shall not disburse funds on existing participations, loans in process, investments or other extensions

of credit secured by nonresidential real estate unless it has obtained the following:

a. written documentation showing the date, amount, purpose, and recipient of every disbursement;

b. written documentation evidencing all modifications to the original contract, including appropriate approval of each modification; and

c. written documentation supporting all releases of any portion of the collateral supporting the loan or other extension of credit.

6. The Institution shall not increase its liabilities during any calendar quarter in excess of the amount of interest credited on savings accounts during the quarter (or, in the case of share accounts, earnings credited) and the amount necessary to fund during the quarter any loans in process obligations or legally binding commitments existing as of the effective date of this Agreement.

7. The Institution shall comply fully with the requirements of Section 563.17-2 of the Insurance Regulations, 12 C.F.R. Section 563.17-2 (1988), as it pertains to the Institution's obligation to obtain an appraisal on each parcel of real estate owned at the time of the Institution's acquisition of such property and at such times thereafter as dictated by prudent management policy.

8. The Institution shall submit a bimonthly operating report in the form required by the Supervisory Procedures Manual. The first such bimonthly report shall be submitted for the two-month period ending February 28, 1989. The bimonthly reports are to be

received by the Supervisory Agent within twenty (20) days following the end of the reporting period.

9. Within thirty (30) days after the execution of this Agreement, the Institution shall provide to the Supervisory Agent a list of all loans-in-process obligations and legally binding commitments that exist as of the date of this Agreement and provide a schedule of the monthly estimated disbursements for outstanding commitments and loans-in-process obligations.

The list of commitments shall include:

- a. the type of commitment;
- b. the date of commitment;
- c. the total amount;
- d. the identity of the borrower;
- e. the identity of the seller, if applicable;
- f. the effective date;
- g. the date of anticipated funding.

The Institution shall submit with this list a written opinion from independent legal counsel that he/she has reviewed the terms of each unfunded commitment in excess of Two Hundred Fifty Thousand Dollars (\$250,000) and address whether or not such commitment constitutes a legally binding obligation of the Institution that could be enforced in a court of law by the party to whom the commitment is made.

10. Upon the request of the Supervisory Agent, the books and records of the Institution and of any wholly-owned or majority-owned subsidiary of the Institution shall be made available to the representatives of any qualified institution,

person, or entity upon execution of a confidentiality agreement acceptable to the Supervisory Agent and at such times and in a manner which will least interfere with the on-going activities and business of the Institution.

11. The board of directors shall within a reasonable period of time take under consideration any plan of combination or reorganization that is forwarded and recommended to the board of directors by the Supervisory Agent; shall within a reasonable period of time approve any such plan of combination or reorganization under which the board of directors in good faith determines that the interests of the depositors, other creditors and borrowers of the Institution are protected; and shall not disapprove any such plan of combination or reorganization, except for reasonable cause, consistent with the fiduciary duties of the board of directors, stated in writing.

12. The board of directors shall recommend to the shareholders of the Institution any plan of combination or reorganization approved by the board of directors pursuant to paragraph 11 of this Agreement, if approval of the shareholders or a portion thereof, is necessary to effect such plan.

13. Within thirty (30) days after the effective date of this Agreement, and on a quarterly basis thereafter, the Institution shall submit to the Supervisory Agent an ongoing report regarding the recapitalization efforts of the Institution ("Recapitalization Report"). Such report shall address any and all material communications, discussions and/or negotiations engaged in by, or on behalf of, the Institution, or offers received from third

parties, to effect a merger, a consolidation, a transfer of assets and liabilities, a reorganization, an acquisition, or a capital infusion and shall contain the names and addresses of all applicable persons or entities and shall further contain a summary of the substantive terms and conditions of each proposed transaction.

14. The Institution shall not initiate any litigation against any FSLIC-insured institution for which the FSLIC has been appointed receiver or conservator, or that is operating under the Management Consignment Program. In the event of a dispute between the Institution and an institution for which the FSLIC has been appointed receiver, the Institution shall present its claim to the receiver through the administrative claims procedure. If dissatisfied with the decision of the receiver, the Institution may appeal the matter to the Bank Board, whose decision the Institution shall accept.

In the event of a dispute between the Institution and any other institution(s) in the above-described categories, the business decision makers of each institution are to first pursue good faith efforts toward a negotiated settlement of the dispute. If the institutions are unable to reach a negotiated settlement, the Institution hereby agrees to submit the dispute for binding arbitration pursuant to the Rules of the FSLIC Arbitration Program and to sign an agreement to arbitrate in the form attached as Exhibit A. The Institution further agrees that it will accept the arbitration award as a final resolution of the dispute, that it will not challenge or contest the award, and that it will consent

to the jurisdiction of any court in which judgment on the arbitration award is entered.

The Institution further agrees to notify the Supervisory Agent within ten (10) days of the date it becomes involved in any of the above-described disputes.

15. The Institution shall file all financial reports required by the FSLIC including monthly and quarterly reports by the required due date and such other reports requested by the Supervisory Agent by the requested due date.

16. The Board of Directors shall:

- a. designate a committee whose duties shall be to monitor and implement the provisions of this Agreement and to monitor and report to the board regarding the Operating Plan. This committee shall be called the Compliance Committee and shall be composed of two officers of the Institution;
- b. meet each month with the Compliance Committee to review the Institution's compliance with this Agreement and to monitor implementation of the Operating Plan;
- c. no later than the 45th day following the end of each calendar month, the board of directors shall file with the Supervisory Agent a resolution, similar to the

resolution attached hereto as Exhibit B, signed by each attending director, certifying that during the preceding calendar month the board has met with the Compliance Committee and has been assured by that committee that the Institution has complied with all conditions of this Supervisory Agreement, except as may be noted in the report of the Compliance Committee;

- d. require the Compliance Committee to prepare a report, on a quarterly basis, on the Operating Plan containing a comparison of the Institution's year-to-date operating results against the projected results in the Operating Plan;
- e. prepare minutes of its meetings with the Compliance Committee, which minutes shall disclose the extent of the board of directors' involvement in the monitoring process of the Operating Plan. A copy of the minutes of the board of directors' meetings with the Compliance Committee and a copy of the written report on the Operating Plan shall be filed with the Supervisory Agent within thirty (30) days following the end of each quarter.

f. designate any one of three outside directors to meet with the Compliance Committee and to review and approve every disbursement of funds of \$500,000 or more, in advance of disbursement; minutes of each meeting shall be kept and reflect such approval and shall describe the nature and purpose of the disbursement.

17. All technical words or terms used in this Agreement, for which meanings are not specified or otherwise provided by the provisions of this Agreement, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, any such technical words or terms used in this Agreement and undefined in said Code of Federal Regulations shall have meanings that accord with the best custom and usage in the savings and loan industry.

18. This Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Institution. It is understood and agreed that this Agreement is a "written agreement entered into with the [Federal Home Loan] Bank Board" as that phrase is used in Section 5(d)(2) of the HOLA, 12 U.S.C. Section 1464(d)(2)(1982).

19. The terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

20. This Agreement shall remain in effect until terminated by the FHLBB, acting through its Supervisory Agent at the Federal Home

Loan Bank of Topeka. Such Supervisory Agent may suspend, in his/her sole discretion, any or all provisions of this Agreement during the term of this Agreement. The Supervisory Agent will entertain, in good faith, written requests for termination of the Agreement, if, in his/her opinion, the Institution has at all times complied with the terms of this Agreement and has maintained compliance with regulatory capital requirements for three (3) consecutive quarters.

IN WITNESS WHEREOF, the parties have executed this Agreement individually or by their duly designated agent. A certified copy of the resolution of the Board of Directors of Mid Kansas Federal Savings and Loan Association of Wichita authorizing the execution of this Agreement is attached hereto and made a part hereof.

FEDERAL HOME LOAN BANK BOARD

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Its: Supervisory Agent  
Federal Home Loan Bank  
of Topeka

MID KANSAS FEDERAL SAVINGS AND  
LOAN ASSOCIATION OF WICHITA  
Wichita, Kansas

By: \_\_\_\_\_ /s/ \_\_\_\_\_

**CERTIFIED COPY OF  
RESOLUTION OF BOARD OF DIRECTORS**

I, the undersigned, being the duly qualified Secretary of Mid Kansas Federal Savings and Loan Association of Wichita, Wichita, Kansas ("the Institution"), hereby certify that the following is a true copy of a resolution duly adopted by its Board of Directors at a meeting duly called and held on Friday, January 13, 1989, that at said meeting a quorum was present and voting throughout, and that said resolution has not been rescinded or modified and is now in full force and effect:

**RESOLUTION**

WHEREAS, the officers and directors of the Institution have been advised that the Federal Home Loan Bank Board ("FHLBB") representatives believe the Institution to have violated Section 563.13 of the Rules and Regulations for FSLIC-Insured Institutions ("Insurance Regulations") (12 C.F.R. 563.13) to which the Institution is subject thereby providing grounds for the initiation of cease-and-desist proceedings against the Institution by the FHLBB, and

WHEREAS, said officers and directors have been informed that the FHLBB will forbear from the initiation of cease-and-desist proceedings as a result of the Institution's failure to meet its regulatory capital requirement in accordance with Section 563.13 of the Insurance Regulations (12 C.F.R. 563.13) if the attached Supervisory Agreement ("Agreement") is executed by the Institution and if its terms are thereafter carried out by the Institution, and

WHEREAS, the directors of the Institution have read and considered the Agreement to be attached to the minutes of the meeting of the Board of Directors held on January 13, 1989 and after due consideration, and in the interest of regulatory compliance and cooperation, have determined to enter into the Agreement;



EXHIBIT A

AGREEMENT TO ARBITRATE

We, the undersigned parties, hereby agree to submit to arbitration under the Rules of the Federal Savings and Loan Insurance Corporation Arbitration Program the following controversy: (cite briefly). We further agree that the above controversy be submitted to Arbitrator(s) selected from the National Panel of Arbitrators for use in savings and loan disputes. We further agree that we will faithfully observe this agreement and the Rules; that we will, without delay, comply with any and all Orders and decisions of the Arbitrator(s); that we will abide by and perform any award rendered by the Arbitrator(s); that we will accept the award as a final resolution of the controversy; that we will not challenge or contest the award; and, that a judgment of a Court having jurisdiction may be immediately entered upon the award and executed.

EXHIBIT B  
RESOLUTION

WHEREAS, the Board of Directors of Mid Kansas Federal Savings and Loan Association of Wichita, Wichita, Kansas, has been required to make certain certifications regarding the activities as outlined in the Supervisory Agreement dated \_\_\_\_\_, 1989, and

WHEREAS, the Directors have met with the Institution's Compliance Committee concerning the Institution's compliance with the Supervisory Agreement and the Institution's Operating Plan; and

WHEREAS, the directors have been assured by the Compliance Committee and after reasonable inquiry are of the knowledge and belief that the Institution is in compliance with the Supervisory Agreement except as may be noted in the Compliance Committee's report. A copy of said report is attached to this resolution; and

WHEREAS, the directors have met with the Compliance Committee on at least a quarterly basis to review and monitor the Institution's Operating Plan and compare the actual results to the projected results contained in the Operating Plan;

NOW, THEREFORE, BE IT RESOLVED, that the members of the Board of Directors hereby certify that, as a result of meeting with and in reliance upon representations of the Compliance Committee, to the best of their knowledge and belief and to the extent noted in

the Compliance Committee's report, the Institution has complied with all conditions of the Supervisory Agreement during the month of \_\_\_\_\_, 1989.

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