

Rosemary Stewart
95270
1989 Supervisory
Agreements
Subject File

SUPERVISORY AGREEMENT

This Supervisory Agreement ("Agreement") is made and is effective this 6TH day of APRIL, 1989, by and between The Garnett Savings and Loan Association, Garnett, Kansas, FHLBB No. 03582 ("Institution" or "Garnett Savings"), and the Federal Savings and Loan Insurance Corporation ("FSLIC"), a corporate instrumentality and agency of the United States, which is under the directive of 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 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 FSLIC is of the opinion that as of March 31, 1986, 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 FSLIC; 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 FSLIC 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, and, in the sole opinion of the Principal Supervisory Agent, the projected period to insolvency of the Institution exceeds six (6) months;

NOW, THEREFORE, in consideration of the FSLIC'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. 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, single family residences secured by first liens on such

- properties that do not exceed Two Hundred Fifty Thousand Dollars (\$250,000); or
- (2) to refinance loans on existing 1-4 family residences secured by first liens on such properties that do not exceed Two Hundred Fifty Thousand Dollars (\$250,000), 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% and the combined debt does not exceed Two Hundred Fifty Thousand Dollars (\$250,000); 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 Five Hundred Thousand Dollars (\$500,000); 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 Five Hundred Thousand Dollars (\$500,000); 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 Five Hundred Thousand Dollars (\$500,000); 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 Five Hundred Thousand Dollars (\$500,000); 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 Five Hundred Thousand Dollars (\$500,000), or irrespective of the foregoing sum, the loss to be recognized upon transfer exceeds the greater of 15% of the net book value or Ten Thousand Dollars (\$10,000);

e. invest in or transfer any security or set of securities in excess of Twenty Thousand Dollars (\$20,000); 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 Five Hundred Thousand Dollars (\$500,000);

g. invest in or transfer commercial loans or letters of credit, whether secured or unsecured, with a book value in excess of \$50,000; 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. invest in or transfer any consumer, education, or home improvement loans in excess of Twenty-Five Thousand Dollars (\$25,000);

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

j. 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 Thirty Thousand Dollars (\$30,000) and the aggregate increase or increases for any employee do not exceed ten percent (10%) during any calendar year;

k. 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 Thirty Thousand Dollars (\$30,000) 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;

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

m. 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;

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

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

3. Within sixty (60) days after the effective date of this Agreement, the Institution shall prepare, adopt and submit for review and approval by the Supervisory Agent, a written business plan that sets forth a plan to bring the Institution into compliance with Section 563.13 of the Insurance Regulations. The business plan shall contain twelve (12) months' financial projections and a budget with respect to the overall operations of the Institution. The Institution hereby agrees to make all revisions to the business plan that are required by the Supervisory Agent and to comply with the business plan, including all revisions thereto. At the end of each semi-annual period, the Institution shall prepare, adopt and submit to the Supervisory Agent an updated twelve (12) months' financial projections and budget covering the succeeding twelve month period.

4. The board of directors of the Institution shall adopt a resolution appointing a senior officer or officers to be responsible for monitoring on a monthly basis the Institution's regulatory capital and its compliance with the business plan prepared, adopted, and approved pursuant to paragraph 3. A copy

of the board of directors' resolution shall be submitted to and received by the Supervisory Agent no later than April 30, 1989. Further, on a quarterly basis the Institution shall prepare a detailed report on its compliance with said business plan and its progress in meeting its regulatory capital requirement. The written report shall contain a comparison of the Institution's year-to-date operating results against the projected results in the business plan as of the end of each calendar quarter. If the actual operating results fail to meet the projected results of the business plan in any material respect, the report shall include an explanation of such deviation and a specific description of the measures proposed to correct and/or abate any adverse deviations. This report shall be reviewed and approved by a majority of the directors and a copy shall be submitted by the Institution to, and received by, the Supervisory Agent no later than the 25th day following each quarterly period. Preparation, approval, and submission of this report shall continue until this Agreement is terminated.

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

6. Within forty-five (45) days after the effective date of this Agreement, the Institution shall submit to the Agent for approval, specific loan and investment policies and procedures that shall govern all loans, other extensions of credit, and loan investments made or purchased by the Institution or its subsidiaries ("Underwriting Standards"). These Underwriting

Standards, at a minimum, shall require that prior to making or purchasing (or committing to make or purchase) any loan, other extension of credit or loan investment, the Institution or its subsidiaries must have obtained, as appropriate, each of the items listed in subsections (a) through (p) of paragraph 7 and subsections (a) through (c) of paragraph 8 of this Agreement, and in Section 563.17-1(c) of the Insurance Regulations.

7. Until it has received approval of the Underwriting Standards from the Agent, the Institution or any of its subsidiaries shall not make or purchase any loan (other than 1-4 family dwelling loans from FHLMC, FNMA, or GNMA supervised lenders and consumer loans acquired through secondary markets), other extension of credit or investment without having first obtained, as appropriate, each of the following:

(a) a written application signed by the borrowers and guarantors stating the purpose of the loan, extension of credit or investment, and the identity of the security property;

(b) signed financial statements of the borrowers and guarantors;

(c) a signed statement disclosing the purchase price paid by the borrowers;

(d) current credit reports for each borrower and guarantor together with a written report signed by an employee of the Institution responsible for analyzing the loan, extension of credit or investment ("Underwriter") explaining all outstanding derogatory items in the report and reflecting compliance with the Equal Credit Opportunity Act;

(e) a written report, signed by the Underwriter, evidencing that material items in the borrowers' and guarantors' financial statements have been verified and analyzed to ensure that the borrowers and guarantors have sufficient assets and cash flow to retire the loan under the terms of the note and/or guaranty;

(f) in the case of a loan or extension of credit upon real property or real property interests, an appraisal report which complies with Sections 563.17-1 (c)(1)(iv) and 563.17-1a of the Insurance Regulations and conforms to generally-acceptable appraisal policy and practice guidelines;

(g) in the case of a loan secured by property other than real estate, an appropriate statement of value of the security property prepared by a qualified person, a verification of the lien status of the security property current through the date of the loan or commitment decision and, where appropriate, documents verifying the existence of the proposed security property and that it is owned by and/or title is held by the proposed borrower;

(h) written evidence, duly verified, that the borrower has invested cash or another form of equity, as appropriate, in the security property;

(i) in the case of construction loans or multiple disbursement loans for improvements, written cost estimates and breakdowns prepared by a qualified engineer, architect, or other person qualified to prepare such an estimate;

(j) written market feasibility studies prepared by a qualified professional for all acquisition, development, and construction loans;

(k) a written approval form showing when and by whom the loan, other extension of credit or investment was approved and the terms and conditions of such approval;

(l) title insurance commitment or acceptable attorney's opinion establishing the quality and validity of the Institution's lien on any real estate securing the extension of credit, and subsequent to closing of the loan, a title insurance policy or acceptable attorney's opinion reflecting the required quality and validity of the Institution's lien, and as supported by a current, signed survey reflecting all physical improvements above and below ground, encroachments, flood plain status, easements, and boundary line descriptions;

(m) written documentation showing that the Institution, upon the closing of the loan, or other extension of credit, furnished the borrowers or guarantors a statement setting forth in detail all charges and fees paid and obligated to be paid, including, but not limited to, the loan settlement statement;

(n) a written record showing the status of taxes, assessments, insurance premiums, and other charges on the security of the loan, other extension of credit or investment;

(o) written documentation evidencing hazard insurance, in full force and effect, to protect the Institution from loss, as outlined in the FHLBB's policy statement at Section 571.4 of the Insurance Regulations; and

(p) the file for each loan or loan commitment granted or purchased by the Institution shall include a written certification by an officer or other employee of the Institution that upon actual

review, knowledge, and belief the loan complies with all acceptable provisions of the Insurance Regulations and this Agreement.

8. The Institution shall not disburse funds on existing participations, loans in process, investments or other extensions of credit (other than 1-4 family residential loans, consumer loans including those acquired through secondary markets, and investments eligible as assets qualifying for liquidity as defined in Section 523.10) without first having obtained, as appropriate, each of the items listed in subsections (a) through (p) of paragraph 7 of this Agreement. Furthermore, the Institution shall not disburse funds for any loan, participation, or other extension of credit 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.

Every disbursement of funds, except as excluded above, of \$100,000 or more shall be approved in advance by a committee established by the Institution's board of directors, which committee shall consist of at least one outside director. The minutes of each meeting of such committee shall reflect such approval and shall adequately describe the nature and purpose of the disbursement.

Nothing in this paragraph shall be construed as precluding the Institution from honoring legally binding written contractual obligations outstanding on the date of the Agreement; provided, however, for any commitment which the Institution contends that compliance with this paragraph would result in an abrogation or breach of such commitment, the Institution shall take the following steps:

(a) each disbursement of funds shall be supported by documentation sufficient to support the propriety of the disbursement;

(b) the transaction must be financially safe and sound and must comply with all applicable requirements of the Insurance Regulations; and

(c) the Institution shall obtain a written opinion from its legal counsel stating that the terms of the applicable commitment have been reviewed and that the transaction constitutes a legally binding obligation on the part of the Institution to fund; and that the pertinent documentation set forth in paragraph 7 of this Agreement could not be obtained without an abrogation or breach of the applicable commitment.

9. Notwithstanding any other provision contained within this Agreement, Garnett Savings shall not reinvest in Commonwealth Financial Futures Fund, Limited Partnerships, or any other limited

partnership fund, without prior written approval of the Supervisory Agent.

10. The Institution shall not increase its liabilities during any calendar quarter in an amount exceeding the amount of interest credited on savings accounts during such calendar quarter (or, in the case of share accounts, earnings credited) plus the amount necessary to fund any loans-in-process obligations or legally binding commitments existing as of September 23, 1988.

11. Within thirty (30) days after the effective date 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 September 23, 1988 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 commitment in excess of Two Hundred Fifty Thousand Dollars (\$250,000) and addresses 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.

12. Within thirty (30) days after the effective date of this Agreement, the Institution shall prepare, adopt and submit for review and approval by the Supervisory Agent, a written appraisal policy which complies with Section 563.17-1a of the Insurance Regulations.

13. Within sixty (60) days of the date of this Agreement, Garnett Savings shall file with the Supervisory Agent, a plan for the recapitalization of the Institution ("Recapitalization Plan"). Such plan shall have as its major goal a merger, a consolidation, a transfer of assets and liabilities, a reorganization, an acquisition, or a capital infusion for the Institution. This Recapitalization Plan, before being implemented, shall be subject to the review and approval of the Supervisory Agent.

14. Subject to the fiduciary duties of the board, stated in writing and provided to the Supervisory Agent, 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 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. No later than the 30th day of each calendar month, the board of directors shall file with the Supervisory Agent a resolution, similar to the attached resolution, signed by each director, certifying that during the preceding calendar month,

Garnett Savings has complied with all conditions of this Supervisory Agreement.

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.

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 Savings and Loan Insurance] Corporation" as that phrase is used in Section 407(e) of the National Housing Act of 1934, as amended ("NHA"), 1730(e)(1982).

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.

This Agreement shall remain in effect until terminated by the FHLBB, acting through its Supervisory Agent at the Federal Home Loan Bank of Topeka. The Supervisory Agent will grant requests for termination of this Agreement at any time if, in his/her opinion, the Institution has complied with the terms of this Agreement and has been in compliance with the regulatory capital requirements for two consecutive quarters. Additionally, if the FHLBB shall approve

RESOLUTION

WHEREAS, the Board of Directors of The Garnett Savings and Loan Association, Garnett, Kansas, has been required to make certain certifications regarding the activities as outlined in the Supervisory Agreement dated _____, 1989, and

WHEREAS, the Directors have reviewed certain activities and transactions with the officers of the Institution occurring during the month of _____, 1989;

NOW, THEREFORE, BE IT RESOLVED, that the members of the Board of Directors hereby certify that, to the best of our knowledge and belief, The Garnett Savings and Loan Association has complied with all conditions of the Supervisory Agreement during the month of _____, 1989.

CERTIFIED COPY OF
RESOLUTION OF BOARD OF DIRECTORS

I, the undersigned, being the duly qualified Secretary of The Garnett Savings and Loan Association, Garnett, 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 APRIL 6TH, 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 Savings and Loan Insurance Corporation ("FSLIC") 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 FSLIC, and

WHEREAS, said officers and directors have been informed that the FSLIC 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 attached to the minutes of the meeting of the Board of Directors held on APRIL 6TH, 1989 and after due consideration, and in the interest of regulatory compliance and cooperation, have determined to enter into the Agreement:

NOW, THEREFORE, BE IT RESOLVED, that the proposed Agreement, a copy of which is attached hereto, be and is hereby approved by the Board of Directors of the Institution. The president of the Institution is authorized to sign and execute the Agreement on behalf of the Institution. The officers and employees of the Institution are directed and authorized to take all necessary steps to implement immediately the terms of the Agreement.

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of The Summit Savings & Loan Assoc. this 7th day of April, 1989.

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Secretary



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.