

1991

# Kent L. Brown and Larry R. Hendricks v. Roy B. Moore, Elaine B. Weis, and The Department of Financial Institutions of Utah : Brief of Appellees

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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| KENT L. BROWN and LARRY R. HENDRICKS, individually,  | ) |  |
|  | ) | BRIEF OF APPELLEES                               |
| Plaintiffs/Appellants,   | ) |  |
|  | ) |  |
| vs.  | ) | Appellate Case No. 910535                        |
|  | ) |  |
| ROY B. MOORE, ELAINE B. WEIS, THE DEPARTMENT OF FINANCIAL INSTITUTIONS OF UTAH; and DOES 1 through 20, | ) | Priority Category No. 16 (Per R.29(b), U.R.A.P.) |
|  | ) |  |
| Defendants/Appellees.  | ) |  |

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APPEAL FROM JUDGMENT DISMISSING COMPLAINT ON SUMMARY JUDGMENT  
BY THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,  
STATE OF UTAH

JUDGE HOMER F. WILKINSON

---

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JURISDICTION OF THE APPELLATE COURT

The Utah Supreme Court has jurisdiction under Utah Code Ann. § 78-2-2(3)(j) (1953), as amended.

STATEMENT OF ISSUES FOR REVIEW

The Department of Financial Institutions of Utah and Commissioner Elaine B. Weis, Defendants/Appellees ("State defendants"), accept the statement of issues prepared by Kent L. Brown and Larry R. Hendricks, Plaintiff/Appellants' ("shareholders"), with the following modification.

The Shareholders' description of the basis for the District Court's decision is incomplete. The first issue states the District Court dismissed claims for breach of contract "on the ground that said claims merely stated claims for tortious or other conduct . . ." barred by § 63-30-5. Appellants' Brief at 1. But the District Court gave additional reasons. The District Court ruled that the only contractual obligation of the Department of Financial Institutions (hereinafter the "Department") was under Section 3 of the contract entitled "Department's Obligation." That obligation was to "order stock of Western Heritage transferred to" the shareholders. Memorandum Decision and Order at ¶ 6, R. at 561-562, Exhibit 1 in Appendix to this Brief; Agreement at section 3, R. at 685, Exhibit 2 in Appendix. This was undisputedly done. Verified Complaint ¶ 36, R. at 14. The Court went on to rule that alleged omissions and misrepresentations, whether or not in the contract, are tort claims as opposed to contract obligations.

Memorandum Decision at ¶ 7, R. at 562, Exhibit 1 in Appendix.

In addition to finding the State defendants immune from claims of misrepresentation, the court found it undisputed that the shareholders did not rely, but performed their own "due diligence" investigation and prepared their own financial analysis, as alleged in their complaint.<sup>1</sup> Verified Complaint at ¶ 20, R. at 5-8; Memorandum Decision at ¶ 4, R. at 561, Exhibit 1 in Appendix; Financial documents prepared by Brown and Hendricks, R. at 436-441; Exhibit 3 in Appendix. Not only did they allege it in the complaint, but the shareholders represented in writing that they had "not been restricted in any significant way from examining and auditing the thrift" and were "reasonably satisfied with the overall accuracy and completeness of the information . . . ." Agreement at section 4, R. at 685-86, Exhibit 2 in Appendix; Memorandum Decision at ¶ 4, R. at 561, Exhibit 1 in Appendix.

Also, the shareholders were adequately qualified to perform a due diligence investigation. Mr. Hendricks is a CPA and Mr. Brown is past owner of Cate Equipment Company where he dealt

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<sup>1</sup>Hendricks and Brown relied on the work prepared by western Heritage's outside accountants, Main Hurdman. For some unknown reason they did not sue Main Hurdman. They also relied on the representations of James Munsee, Western Heritage's director, and Roy Moore, Western Heritage's director and legal counsel. Munsee filed bankruptcy and could not be sued in this case, and Brown and Hendricks settled with Roy Moore on undisclosed terms.



with bank loans and equipment leases.<sup>2</sup> Motion for Summary Judgment, Undisputed Facts 1 and 2, R. at 249; Memorandum Decision at ¶ 4, R. at 561, Exhibit 1 in Appendix.

Not only were the shareholders sophisticated and informed, but they were told in writing at the closing by counsel for the Industrial Loan Guarantee Corporation ("ILGC") that there was "no guarantee there were or would in the future be sufficient assets to enable the ILGC to perform" its obligations.<sup>3</sup> Letter from Philip Pugsley to Larry Hendricks, R. at 707, copy attached to the ILGC Agreement which is Exhibit 4 in Appendix; Memorandum Decision ¶ 5, R. at 561, Exhibit 1 in Appendix.

Further, the shareholders invited State defendant's intervention. After the shareholders took possession of Western Heritage and ran it for about seventeen months, they undisputedly "decided they could no longer in good faith accept deposits and requested permission" from the Department to "cease taking

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<sup>2</sup>Kent Brown wanted to buy Western to have ready financing for his leases, and Mr. Brown did use the assets of Western to fund leases.

<sup>3</sup> The shareholders argued before the District Court that the "earliest" they received the letter from ILGC counsel was the closing. R. at 541. On the other hand, the agreement between the shareholders and the ILGC says it was delivered at the closing, the date on the letter (December 20, 1984) is six days before the closing, and the letter is attached to the ILGC Agreement in the record. R. at 696, 707, Exhibit 4 in Appendix. But assume arguendo that it was delivered after the closing. The shareholders still are not in an equitable position to raise their only objection seven years later.

deposits."<sup>4</sup> Again, this fact was alleged in the verified complaint. Verified Complaint at ¶ 45, R. at 16; Memorandum Decision ¶ 8, R. at 562, Exhibit 1 in Appendix.

There is a another basis which relates to both the contractual claims and the constitutional claims. The Commissioner performed "essential governmental functions" and "followed statutory guidelines." The District Court authorized the Commissioner to appoint a liquidator. Order Granting Possession, R. at 714-16, Exhibit A in Appendix. And at the time of liquidation, the District Court found after hearing the Commissioner's testimony that she had not acted "contrary to law."<sup>5</sup> Findings of Fact and Conclusions of Law and Order approving Plan of Liquidation at 2-3, 9 (Conclusion of Law 2), R. at 495-504, Exhibit 5 in Appendix; Determinative Statutes re: regulation of financial institutions, Exhibit 6 in Appendix.

Finally, the shareholders did not comply with statutory guidelines. Utah Code Ann. § 7-2-3(1) (Supp. 1986) provides that any person considering itself aggrieved by the taking of possession

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<sup>4</sup>Not only did the shareholders request assistance, but after the State defendants took possession Larry Hendricks agreed with the State defendants to stay on and manage Western.

<sup>5</sup> The shareholders argue that the State Defendants stipulated that they would not raise the Court's finding that the commissioner complied with the law as a bar to future claims. This is true according to the Court's written Findings and Order, although the parties have no background information regarding this stipulation. R. at 496-497. However, if the Court's prior order is not a bar, it is certainly persuasive.

of a financial institution must apply to the Court to enjoin further actions of the Commissioner within ten (10) days of the Commissioner's taking possession. Larry Hendricks, as President of Western, was personally served with notice of the State defendants' petition to take possession of Western, and the notice clearly stated objections had to be filed within ten (10) days. Notice of Filing Petition and Need to File Objection Within Ten (10) Days, R. at 491-492, Exhibit 7 in Appendix. No notice was filed within ten (10) days. R. at 560-561.

All of these facts combine together to form the basis for the District Court's dismissal of the "breach of contract" claims. Thus, the shareholders' statement of issues partially, but not fully, described the reasons stated in the District Court's Memorandum Decision and Order.

#### DETERMINATIVE STATUTES

See Exhibit 6 in Appendix for text of determinative statutes.

#### STATEMENT OF THE FACTS

The shareholders list 39 material facts. Most of them are irrelevant (for example those dealing with misrepresentations). Some of them are speculative (for example, 36 and 38) and some are conclusions of law (for example, 14 and 17). Many are inaccurate,

and the State defendants do not stipulate to them.<sup>6</sup> But even if

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<sup>6</sup>Inaccuracies include the following: (1) in fact 3, Elaine Weis did not meet and negotiate with the shareholders. The shareholders negotiated mainly with Munsee and Moore and later talked to Ed Leary and others at DFI; (2) in fact 8e, the ILGC was not an "arm of the state", and the shareholders at least had constructive notice that the ILGC was not, because it was created as a private corporation by statute. (3) in fact 8f, the State did not promise unlimited forbearance while the shareholders worked out Western's financial difficulties. The State defendants were worried that Kent Brown would abuse Western and finance poorly underwritten leases in which he had a personal interest; (4) in fact 9, the State defendants did not guarantee Western's financial statements, the financial statements were prepared and attested to by Western's outside auditors, Main Hurdman; (5) in fact 10, the shareholders did not purchase Western "from the state." At that point the commissioner had not taken possession and could not convey the institution. This was a supervisory acquisition, and the contract with the state was not a sales contract but an agreement that the State defendants would order prior shareholders to convey stock to Brown and Hendricks; (6) in fact 16a, Western was a member of the ILGC and the shareholders were privy to information regarding its financial condition. The ILGC was solvent when the shareholders purchased Western, and the ILGC was expected to get \$4 million cash from the sale of real property in early 1985. After the ILGC failed, Western had no insurance and could not qualify for FDIC insurance. This is a risk the shareholders assumed when they purchased stock; (7) in fact 16g, the State defendants insisted that all Utah Industrial Loan Companies apply for FDIC insurance in 1985 after private deposit insurance funds in Ohio and Maryland failed. Some like Zions and First Security had no problem, but others did not succeed because of their financial condition, or they did not want to convert to FDIC insurance because they did not want federal regulation; (8) in facts 16j,k, and l, the State defendants did not know that the FDIC would not accept net worth certificates until late 1985 or early 1986. The State defendants could not make an exception for Western. Some institutions could qualify for FDIC insurance and some could not. The FDIC found Western's management unacceptable, among other things. Thus, even if Western had qualified for FDIC insurance, the FDIC would have required Brown and Hendricks be removed from management; (9) in fact 19, the State defendants were as surprised by the 1985 Main Hurdman audit as were the shareholders; (11) in fact 24, the State defendants not only consulted with the governor, but the governor's advisory panel consisting of depositors and community leaders heard all proposals and found that there was no alternative to liquidation. In

facts supported by the verified complaint and affidavit are deemed to be true, the State defendants are entitled to summary judgment.

Also, the shareholders did not dispute any of the State defendants' material facts at the District Court level, and they must also be deemed true. State Defendants' Reply Memorandum, R. at 470-472. Defendants rely on these facts which are set forth below with minor changes. Paragraphs 16, 17, 18, 20 and 21 have been added. Paragraphs 17, 18, 20 and 21 describe documents filed in court. Paragraph 16 describes service upon Larry Hendricks of the notice of need to file objections within 10 days.

1. Plaintiff Kent L. Brown is a resident of Nevada. He is the past owner of Cate Equipment Company where he dealt with loans and equipment leases, and is experienced in other businesses. Motion for Summary Judgment, Undisputed Fact 1, R. at 249.

2. Plaintiff Larry R. Hendricks is a Certified Public

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addition, the State defendants were advised at all times by the Attorney General's office. The State defendants were obligated to follow the advice of the Attorney General. The possession actions were filed by the Attorney General, and the Attorney General handled all legal proceedings involving Western and other industrial loan companies; (11) in fact 31, the order prohibiting Western from making payments was an executive order of the Governor, not the State defendants; (12) in fact 32, Elaine Weis did not meet with Crossland Mortgage. She met with Crossland Savings in 1986 when it purchased Western Savings. Perhaps the similarity in name between Western Heritage and Western Savings created some confusion; (13) in fact 33-39, Hendricks entered into an agency agreement with the State defendants to function as managing agent for Western after the State took possession in 1986. In liquidation, shareholders have no right to compensation. Shareholders receive a residual of any collections after creditors are paid in order of priority.

Accountant. Motion for Summary Judgment, Undisputed Fact 2, R. at 249.

3. Hendricks and Brown learned from James Munsee that Western was for sale in November 1984. Verified Complaint, ¶ 12, R. at 4.

4. Hendricks and Brown were given access to financial records relating to Western. Hendricks and Brown met with James Munsee and Roy Moore and other principals of Western to discuss its business. They knew Western was not a going concern because its capital was depleted, and they knew it would take an infusion of substantial capital to put it in sound condition. Verified Complaint, ¶ 13, R. at 5.

5. Hendricks and Brown also met with Main Hurdman, Western's outside auditors, in Main Hurdman's office to prepare financial projections. Main Hurdman performed an audit of Western, dated June 30, 1984, and Main Hurdman made available to Hendricks and Brown all of its employees, computer, and software for the purpose of constructing the projections. Verified Complaint, ¶¶ 14, 15, 16, R. at 5-6.

6. Plaintiffs performed a "due diligence" investigation. After reviewing Western's records, including the Income and Loss Statement for November 1984, and revising their projections, Hendricks and Brown made an offer to purchase. Verified Complaint, ¶¶ 23-25, R. at 8-9.

7. Because Western was a "failing depository

institution" as defined by Utah law, the Commissioner was empowered to require Western to enter an agreement to transfer its control. Motion for Summary Judgment, Undisputed Fact 8, R. at 250.

8. On December 26, 1984, Hendricks and Brown entered into an agreement with the Department. Motion for Summary Judgment, Undisputed Fact 9, R. at 250.

9. Section 3 of the Agreement entitled "Department's Obligation" says that the Department shall be obligated to require all stock of Western to be immediately conveyed to Hendricks and Brown. Motion for Summary Judgment, Undisputed Fact 10, R. 250; Agreement, Exhibit 2 in Appendix.

10. The Agreement states that Western was a "failing depository institution" as defined in § 7-19-9-1(1); that the purchase offered "the best prospects" for continuing Western's business; and that Western violated state law by conducting its business in an unsafe manner. Motion for Summary Judgment, Undisputed Fact 11, R. at 251; Agreement, Exhibit 2 in Appendix.

11. Hendricks and Brown represented in ¶ 4.1 of the Agreement "that they have not been restricted in any significant way from examining and auditing" [Western] "and/or the Department's records concerning the same, and they are reasonably satisfied with the overall accuracy and completeness" of the information contained in the Balance Sheet and Income Statement of Western prepared by its comptroller, Stephen Gundersen. Financial Statements attached to Agreement with signature of Stephen Gundersen, R. at 433;

Agreement, Exhibit 2 in Appendix.

12. On the same day, Hendricks and Brown entered into an agreement with the ILGC. Hendricks and Brown agreed to infuse money into Western and in return the ILGC promised to purchase certificates issued by Western to increase Western's net worth. Motion for Summary Judgment, Undisputed Fact 13, R. at 251-252; ILGC Agreement, Exhibit 3 in Appendix.

13. On December 26, 1984, Elaine Weis, as Commissioner of the Department of Financial Institutions, entered an order requiring all stock of Western to be conveyed to Hendricks and Brown. Motion for Summary Judgment, Undisputed Fact 15, R. at 252; Findings, Conclusion and Order, Exhibit 8 in Appendix.

14. Hendricks and Brown ran Western for approximately seventeen months, through May of 1986. In May they concluded they could no longer in good faith accept further deposits and decided to seek Department's approval to cease taking deposits. Verified Complaint, ¶ 45, R. at 16.

15. On September 22, 1986, Elaine B. Weis filed a petition which was heard ex parte, requesting the Court to enter an Order authorizing the Department to take possession of Western. An Order authorizing the Commissioner to take possession and to appoint a liquidator was entered on that date by the Court. Motion for Summary Judgment, Undisputed Fact 17, R. at 252-53; Petition for Order and Order, Exhibit 9 in Appendix.

16. On September 23, 1986, Larry R. Hendricks as



president of Western was served with notice that the Commissioner had filed a petition seeking to take possession of Western. The notice stated that any objection had to be filed with the Court within ten days. Notice of Filing Petition and Need to File Objection Within Ten days, R. at 491-494, Exhibit 7 in Appendix.

17. On October 21, 1986, Kent L. Brown filed a Petition for Judicial Review requesting that the Court review the actions of the Commissioner and enter an Order reversing or "modifying the action" of the Commissioner. Petition for Judicial Review, R. at 488-89, Exhibit 10 in Appendix.

18. On May 8, 1987, the District Court approved the plan of liquidation. Shareholder Kent L. Brown was represented at the hearing by Michael J. Wilkins, Esq. The Court considered the testimony of the Commissioner, and the exhibits entered into evidence, before entering its order. Findings of Fact, Conclusions of Law, and Order Approving Liquidation, R. at 495-508, Exhibit 5 in Appendix.

19. Plaintiffs filed claims against the Department for breach of contract and unconstitutional taking (Third and Fifth Causes of Action respectively), and against Elaine Weis for violating 42 USC 1983 (Fourth Cause of Action) on November 16, 1987. Verified Complaint, R. at 2-32.

20. On September 6, 1988, Judge Young dismissed with prejudice Kent L. Brown's Petition for Judicial Review. No appeal was taken. Memorandum Decision and Order of Dismissal with

Prejudice, R. at 724-729, Exhibit 11 in Appendix.

21. On July 26, 1991, the District Court entered judgment no cause of action on Brown and Hendricks' Complaint and dismissed it with prejudice. Judgment, R. at 564-565.

#### SUMMARY OF THE ARGUMENT

The Department did not breach contract obligations. It fulfilled its obligations, and assisted the shareholders to fulfill theirs by ordering that the stock of Western be conveyed to them. In addition, the State defendants are immune for claims of misrepresentation, and claims arising out of regulation or licensing decisions. Even if no immunity exists, the shareholders did not reasonably rely and had constructive knowledge.

The shareholders do not have standing to alleged constitutional violations committed against Western. In addition, constitutional issues have already been decided. Even if they had not been decided, no constitutional violations exist, and qualified immunity applies to Commissioner Weis. The State Defendants followed all statutes and court orders. The shareholders waived their right to bring claims when they asked for State intervention and failed to object to the Petition for Order Granting Possession.

#### ARGUMENT

The shareholders make two claims: (1) breach of contract, and (2) constitutional violations.

##### I. BREACH OF CONTRACT

##### A. EXPRESS CONTRACT

The State waived immunity as to contractual obligations in Section 63-30-5. The words "contractual obligations" are the words used in the statute, and the Court should construe this exception to the State's immunity narrowly. Epting v. State, 516 P.2d 242, 244 (Utah 1976); Holt v. Utah State Road Commission, 511 P.2d 1286, 1288 (Utah 1973).

The shareholders claim that sections 2.4 and 5 of the contract were breached. There is a significant flaw in this claim because neither of these sections deal with the Department's "Obligation" which is found in section 3. The heading for section 3 is entitled "DEPARTMENT'S OBLIGATION." However, even though section 3 is obviously relevant and even incorporates the word "obligation" used in the statute, the shareholders never refer to it. The only possible explanation for this is that the shareholders want to ignore it. In addition, the shareholders have admitted, by failing to dispute material facts 9 and 13 above, that the State Defendants fulfilled their contractual obligation.

#### 1. SECTION 2.4

Section 2.4 is a representation, in contrast to an obligation, in the contract. The Department represents it has no knowledge of significant error in the balance sheet for Western which was prepared by Western's comptroller and attached to the agreement. This statement is a disclaimer of knowledge and does not rise to the level of a guarantee. The Department did not intend to attest to Western's financial statements. This was done

by Western's outside auditor, Main Hurdman.

But even if this were construed to be a misrepresentation, the State defendants could not be held liable for two reasons. First, they are immune for both negligent and intentional misrepresentation under Section 63-30-10 (f). And second, even if they were not immune, the shareholders did not rely and had constructive knowledge. They had a duty to perform their own due diligence. The shareholders are sophisticated businessmen and were given complete access to records at Western, Main Hurdman, and the Department, and they stated in section 4.1 of the contract that they were satisfied with the accuracy of the financial statements. Thus, the contract places the duty to verify the financial statements upon the shareholders, and not the department.

## 2. SECTION 5

The shareholders argue section 5 for the first time on appeal. Section 5 says the shareholders must take "possession, control, and responsibility for [Western] immediately following the execution of this agreement." There are several reasons why this does not form a basis to hold the State defendants liable for breach of contractual obligations. First, this section is entitled "OBLIGATIONS OF THE ACQUIRORS." Thus, the shareholders try to twist section 5 into an obligation by the Department to let them "operate Western Heritage as agreed." But no such obligation is there.

Second, the claim that the State Defendants did not allow

them to control Western flies in the face of the Verified Complaint which alleges that after the shareholders took control they "concluded they could no longer in good faith accept further deposits in Western Heritage, and decided to seek the Department's approval to cease taking deposits." R. at 15. This is not only inconsistent with their argument that the State didn't give them long enough to run Western, but it is grounds for waiver and/or estoppel. In 1986 there was a state wide crisis. Seven thrifts were closed. Each institution was affected by the sinking industry. In addition, the private insurer for Utah industrial loan companies, the ILGC, was closed. Western was not strong enough to qualify for federal insurance. The shareholders and the Department knew a depositor run was inevitable without insurance.<sup>7</sup>

Third, even if the State defendants promised to allow the shareholders to run Western for three years or some other "reasonable time" it would not have been an enforceable obligation. The shareholders ignore or do not understand the nature of a regulated industry. Section 7-2-1, et.al. clearly places a duty on the State defendants to evaluate each institution it regulates and take remedial action if the institution is failing and does not meet statutory criteria. The State defendants cannot agree with the shareholders to let them run Western for a set period of time

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<sup>7</sup>There was a run on Foothill Thrift when a local TV station announced it was applying for insurance. The State took possession of Foothill and six others to preserve them.

without deposit insurance or sufficient assets, and thereby ignore the statutory duties placed upon them by Section 7-2-1, et.al.

B. IMPLIED COVENANTS

The shareholders argue that the State Defendant's breached their implied covenant of fair dealing by failing to allow the shareholders "to possess and control Western Heritage as agreed," failing to recognize net worth certificates as "the equivalent of cash," and by failing to "inform [them] of material information." Brief of appellant at 22-23.

First, the State waived immunity for "contractual obligations" only. This waiver must be construed narrowly under the Epting and Holt cases, and does not include implied covenants. This is especially true in light of Section 3 of the agreement which describes the "DEPARTMENT'S OBLIGATIONS."

Second, even if the waiver includes implied covenants, the State Defendants did not disadvantage the shareholders. On the contrary, the State Defendants helped the shareholders obtain the benefit of the contract by ordering Western's stock to be transferred to them. From that point forward the shareholders accepted a business risk.

The State defendants' arguments regarding whether there were misrepresentations about the assets of Western, or whether there was some guarantee to let the shareholders run Western for a certain time have already been stated.

In addition, the shareholders had at least constructive

notice of the financial condition of Western, as well as the fact that the ILGC was not an arm of the State because the ILGC was created as a private corporation by statute. See Rapps v. Salt Lake City, 527 P.2d 651 (Utah 1974) (claim against city sounded in deceit, not contract; city immune for deceit and plaintiff had constructive notice of alleged undisclosed facts.)

With respect to the shareholders' only other argument, the Department could not recognize the net worth certificates "as cash" when the ILGC failed. The value of the net worth certificates depended on a note and promise from the ILGC which became worthless when the ILGC failed. This connection between the value of Western's assets and the ILGC was clear from the beginning. ILGC AGREEMENT and its attachments, Exhibit 4 in Appendix.

Lastly, the shareholders argued to the District Court that the State should "back up" or guarantee the net worth certificates. Summary Judgment Hearing Transcript, May 16, 1991, at 41-42, R. at 776-77. But the State under Art. VI., Section 29 of the Constitution could not financially back up the ILGC, because it cannot guarantee or "lend its credit" to a corporation. Utah Technology Finance Corp. v. Wilkinson, 723 P.2d 406, 412 (Utah 1986) (State cannot become a guarantor of another's debts.)

#### C. CASE LAW

The shareholder's do not cite two Utah cases where this Court held the Department is immune from claims arising out of

regulation of insolvent institutions. In both cases the this Court affirmed summary judgment in favor of the Department. Gillman v. Dept. of Financial Inst., 791 P.2d 504 (Utah 1989); and Hilton v. Borthick, 791 P.2d 504 (Utah 1989). In Gillman this Court said, "any injury resulting from a department action or inaction ultimately results from a failure to suspend or revoke [a] license, an immune act."<sup>8</sup> Gillman, 791 P.2d at 511 (citations omitted.)

The shareholders attempt to avoid the State defendants' immunity by framing their claims as "contract" claims and by ignoring Gillman and Hilton. But at the same time, the shareholders unquestionably seek to recover for a "department action or inaction" while regulating an insolvent thrift. Therefore, as Justice Zimmerman noted, these claims are:

. . . futile attempts to obscure the fact that the claims asserted are for injuries arising out of a licensing decision allegedly made in a negligent fashion. As such, they are all immune from suit under Section 63-30-10(3).

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<sup>8</sup>There are several alternative provisions in Section 63-30-10 under which the State defendants could be immune. In addition to immunity for licensing decisions and misrepresentation, Section 63-30-10 provides express immunity for inadequate regulatory inspections and discretionary functions. Discretionary function is defined as a function "of a judgment, planning, or policy nature" committed to one branch of government, on which the courts will refrain from sitting in judgment. Doe v. Arquelles, 716 P.2d 279, 282 (Utah 1985). It is the "balancing of risks and advantages" in the "exercise of basic policy evaluation." Little v. Utah State Division of Family Services, 667 P. 2d 49, 51 (Utah 1983). The commissioner's acts were discretionary because she exercised "judgment" and balanced "risks and advantages" while regulating Western. Also, claims of failure to disclose the financial condition of Western could fall under the inadequate inspection provision.



Gillman, 791 P.2d at 509. This Court went on to explain at p. 511 why the alleged acts arose out of a licensing decision:

This is because the only sanction the Department can impose on a financial institution for misconduct of any kind is to suspend or revoke the financial institution's operating license.

Then on the last page of Gillman case this Court explained its policy to allow a regulator to function properly by freeing the regulator from unreasonable risk of liability:

. . .to provide the utmost public protection, the governmental entities should not be dissuaded from engaging in such activities by the fear that liability may be imposed if an employee performs his duties inadequately.

In Hilton, this Court cited Gillman and said at p. 505:

There, we determined that the Department of Financial Institutions was immune from suit for failure to properly inspect or regulate pursuant to title 7 or title 70B.

In addition to Utah cases, a host of federal cases support the lower Court's ruling. There is not room to review the federal case law here.<sup>9</sup> But in summary, federal regulators have been sued numerous times on every conceivable theory and have unanimously been found immune based on the same policy enunciated by this Court in Gillman. The grandfather case is Emch v. United States, 630 F.2d 523 ( 7th Cir. 1980) (shareholders claim that federal regulators permitted misleading reports and failed to

---

<sup>9</sup>A review of the federal cases was given in the State defendants' memorandum in support of summary judgment which is incorporated by reference. R. at 259-284.

properly supervise bank is dismissed and affirmed on appeal).

The shareholders cite Farmers New World Life Ins. Co. v. Bountiful City, 803 P.2d 1241 (Utah 1990), arguing that the same facts can give rise to claims of tort and contract against the government. The principle is true, but that case is distinguishable. In Farmers, the government expressly agreed to allow Farmers to "fully use" a commercial building. The government had no such express obligation in this case. Also, Farmers involved law relating to servient and dominant owners of easements which is not applicable in this case.

## II. CONSTITUTIONAL VIOLATIONS

### A. STANDING

In Norman v. Murray First Thrift & Loan Co., 596 P.2d 1028, 1031-32 (Utah 1979) the court said:

Even though a shareholder owns all, or practically all, of the stock in a corporation, such a fact does not authorize him to sue as an individual for a wrong done by a third party to the corporation.

In Gregory v. Mitchell, 634 F.2d 199 (5th Cir. 1981), shareholders of a bank sued the State Superintendent of Banks and other state regulatory officials for constitutional violations after the bank was closed by the state and its assets sold. The trial court granted a motion to dismiss. On appeal the court said:

The District Court was correct in holding that 'neither officers nor stockholders. . . can maintain an action to redress an injury to the corporation even though the value of their stock is impaired as a result of the injury.' This rule is firmly established . . . [emphasis

added].

Likewise the shareholders in this case have no standing to allege constitutional violations committed against the corporation "even if the value of their stock is impaired." The liquidator appointed by the District Court is the person who can bring such a claim for Western. The shareholders must seek reimbursement for themselves out of proceeds from the liquidation of Western. Lack of standing alone stops the shareholders' constitutional claims. However, as discussed below the claims have no merit even if the shareholders could bring them.

#### B. TAKING WITHOUT JUST COMPENSATION

Shareholders claim "In the Fifth Cause of Action. . .the DFI unconstitutionally took from them their ownership interest in Western Heritage without due process of law, in violation of Article I, Section 7 of the Utah Constitution." Appellants' Brief at 31. Although not specifically alleged, the shareholders also claim a violation of Article I, Section 22 (private property shall not be taken or damaged for public use without just compensation). They argue that a Section 22 violation is inferred within the allegation of the Section 7 violation. There are several problems with this claim.

First, the shareholders should have alleged Article I Section 22 specifically. There is no reason why not. Alleging violation of Section 7 did not put the state defendants on notice of a violation of Section 22, and the shareholders should not be

allowed to add this claim without alleging it.

Further, there is no authority for seeking damages under Section 7. On the contrary, there is authority against it. Figueroa v. State, 604 P.2d 1198, 1206 (Hawaii 1979) (creation of substantive constitutional rights does not mean money damages are available without waiver of immunity); De lao v. Califano, 560 F.2d 1384, 1390 (9th Cir. 1977) (no right to damages without statutory provision). But Section 22 is uniquely self-executing and money damages are available. Colman v. Utah State Land Bd., 795 P.2d 622, 631-634 (Utah 1990). Thus, the shareholders attempt to bootstrap an allegation that does not state a claim into one that does.

Second, even if the shareholders state a Section 22 claim, the issue is already decided. The District Court ruled in its "Order Granting Possession" that no other statutory alternatives to State possession were available to protect "shareholders" and "other parties in interest." The order authorized the Commissioner to appoint a liquidator. R. at 714-16, Exhibit 9 in Appendix. The legislature in an unusual act also ratified this takeover in Section 7-20-1 (1986). Exhibit 6 in Appendix. Later the District Court found the Commissioner had not acted "contrary to law" in proposing liquidation. See Findings and Order Approving Plan of Liquidation, R. at 495-508, Exhibit 5 in Appendix.

Third, even if this Court decides to revisit the issue,

the State defendants did not take "their ownership interest in Western." The value of the shareholders' stock dropped when Western lost its insurance. The State then took possession of Western, not shareholders' stock, and it was placed in liquidation.

Fourth, the shareholders have no right to compensation. In liquidation, they receive a residual of any collections after creditors are paid in order of priority according to the law.

Finally, with respect to the law, the shareholders cite FDIC v. Mallen, 108 S. Ct. 1780 (1988) for the proposition that the right to serve as president of a bank is a "protectable property right", but Mallen supports the State defendants. The Supreme Court found that due process was not violated when the FDIC suspended a bank president without a hearing first. This is the only financial institution case shareholders cite under their "taking without compensation" argument. They rely heavily on real property condemnation cases which are not analogous, because among other things, the State did not possess Western for its own use.

In addition, there is a Harvard Law Review article on point which says government takeovers of thrifts do not constitute "taking." Curtis, The Taking Clause and Regulatory Takeovers of Banks and Thrifts, Harvard Journal on Legislation, v. 27 No.2, p. 367, Summer 1990. Further, the Supreme Court in a closely analogous case, Connolly v. Pension Benefit Guaranty Corporation, 475 U.S. 212 (1986) found no taking when the Pension Benefit Guaranty Corporation, a government corporation which insures

employee retirement plans, required a withdrawing plan to pay certain debts. The Court found in Connolly that there was no taking because, among other things, the government did not take the assets for "its own use" and the owners knew from the beginning that the government had the power to regulate them. Both are true in this case.

#### C. PROCEDURAL DUE PROCESS

The shareholders claim they were entitled to a prepossession hearing. This issue is also decided. Larry Hendricks, as president of Western, was served with a "Notice of Filing of Petition [to take possession] and of Need to File Objections Thereto Within Ten Days". R. at 491-93, Exhibit 7 in Appendix. But he waived the right, and instead agreed with the State to run Western after possession. Larry Brown filed a late "Petition for Judicial Review" claiming the Commissioner acted contrary to law. The petition was dismissed. R. at 724, Exhibit 11 in Appendix.

Again assuming the Court wants to revisit the issue, there was no procedural due process violation. First, there is no claim that the Commissioner failed to follow all statutory procedures and court orders. Second, there is authority directly on point. In Fahey v. Mallonee, 322 U.S. 245, 253 (1947) the Court found a statute allowing the Federal Home Loan Administration to appoint a conservator for a financial institution without a hearing was constitutional. The Court also found that an institution

cannot challenge the constitutionality of an Act if it has retained the benefits of the Act (which granted it the right to exist). Again, both of these points apply in this case.

D. QUALIFIED IMMUNITY

The question of whether the Commissioner is immune from claims under 42 U.S.C. 1983 should be decided as a matter of law. England v. Hendricks, 880 F.2d 281 (10th Cir. 1989). The shareholders admit at page 48 of their brief that the Commissioner had authority to issue net worth certificates. They do not dispute that she followed statutory procedures, and they do not address the question of how the Commissioner could violate a "clearly established" constitutional law when obeying a court order. Good faith reliance on a court order provides immunity as a matter of law. See England, at 284. Clearly the Commissioner is protected by the doctrine of qualified immunity.

CONCLUSION

Based on the above, this Court should affirm the District Court's dismissal of the shareholders' claims.

DATED this 29 day of May, 1992.

CHRISTENSEN, JENSEN & POWELL P.C.

By:   
Denton M. Hatch  
Attorney for Defendants/Appellees

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing BRIEF OF APPELLEES was sent by the U.S. Postal Service, postage prepaid, this 1st day of ~~May~~ <sup>June</sup> 1992, to:

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Eagle Gate Tower, Suite 1100  
Salt Lake City, UT 84111

*D. Redden*



APPENDIX

Tab 1

JUN 05 1991

SALT LAKE COUNTY

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

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|   |   |                           |
|---|---|---------------------------|
| KENT L. BROWN and LARRY R.<br>HENDRICKS, Individually,  | ) |                           |
|   | ) |                           |
| Plaintiffs,   | ) | MEMORANDUM DECISION AND   |
|   | ) | ORDER GRANTING DEFENDANTS |
| vs.   | ) | DEPARTMENT OF FINANCIAL   |
|   | ) | INSTITUTIONS' AND ELAINE  |
| ROY B. MOORE, ELAINE B. WEIS,<br>THE DEPARTMENT OF FINANCIAL<br>INSTITUTIONS OF THE STATE<br>OF UTAH; and DOES 1 THROUGH<br>20 inclusive, | ) | WEIS' MOTION FOR SUMMARY  |
|   | ) | JUDGMENT                  |
|   | ) |                           |
| Defendants.   | ) | Civil No. C-87-7906       |
|   | ) | Judge Wilkinson           |

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On May 16, 1991, a hearing was held before the court.  
Plaintiffs were represented by Mr. John Mangum, and defendants

Elaine Weis and the State of Utah were represented by Mr. Denton Hatch, Mr. Greg Sanders and Mr. Ed Ogilvie.

The court, having heard the arguments of counsel, and reviewed the memoranda filed and being fully advised, hereby enters the following:

MEMORANDUM DECISION

1. The Department of Financial Institutions (Department) was empowered by Utah State law to regulate Western Heritage Thrift and Loan (Western Heritage). The Commissioner and Department, while regulating Western Heritage, performed essential governmental functions and are immune from liability under Utah Governmental Immunity Act, § 63-30-1, et seq.

2. In approving the sale of Western Heritage to Kent Brown and Larry Hendricks, and ordering stock transferred to them, and in taking possession of Western Heritage pursuant to court order, and in otherwise regulating Western Heritage during the relevant time period, the Commissioner and Department did not violate any of Larry Hendricks' or Kent Brown's state or federal constitutional rights. There was no taking of private property without just compensation and no violation of due process. The Commissioner and Department are also qualifiedly immune.

3. Mr. Hendricks, as president of Western Heritage Thrift & Loan, was given notice when the State took possession of Western Heritage but did not object within the ten-day period, set forth in § 7-2-3(1) (Supp. 1986). Mr. Brown filed a petition in C86-8004 objecting to the order granting possession and asking

the Court to find the Commissioner acted contrary to law in taking possession of Western Heritage. This was dismissed on the grounds, among others, that it was filed untimely under § 7-2-3(1) (Supp. 1986) which is the applicable statute providing review if any person is aggrieved when the Commissioner takes possession of a financial institution. The Order of Dismissal with Prejudice dated September 13, 1988, was not appealed.

4. Mr. Brown and Mr. Hendricks are sophisticated businessmen. Mr. Hendricks is a CPA, and Mr. Brown is a leasing expert. They performed their own due diligence, prior to purchasing Western Heritage. They reviewed records of Western Heritage, Main Hurdman, and the Department. They prepared a pro forma, and were satisfied before the purchase with the accurateness of the financial statements attached to the agreement they signed with the State of Utah.

5. Plaintiffs also met with the ILGC and entered into a separate agreement with the ILGC after receiving an opinion from ILGC's counsel that, among other things, there was no guaranty there were or would in the future be sufficient assets to enable the ILGC to perform the obligations incurred in connection with the purchase of Western Heritage.

6. Plaintiffs entered into an agreement with the State of Utah, but have not and cannot allege any breach of contract obligation under that contract. The State's only obligation under the contract was to order stock of Western Heritage transferred to plaintiffs which was done on the date of the

agreement.

7. Plaintiffs' claims of misrepresentations inducing them to enter into the contract are tort claims, and the State is immune under the Governmental Immunity Act referred to above. The court makes no finding as to whether or not there was any misrepresentation.

8. In May 1986, plaintiffs decided they could no longer in good faith accept deposits and requested permission from the State of Utah to cease taking deposits. Thereafter, the Commissioner followed statutory guidelines and complied with court orders in taking possession of Western Heritage.

9. The Commissioner also acted pursuant to court order in proposing a plan of liquidation for Western Heritage. In approving the plan of liquidation the court in C86-7253 ruled that the Commissioner did not act arbitrarily or capriciously or contrary to law in its Findings of Fact, Conclusions of Law and Order dated May 8, 1987.

ORDER

The court hereby orders that defendant Elaine Weis' and Department of Financial Institutions' Motion for Summary Judgment is granted.

DATED this 5 day of June, 1991.

BY THE COURT:

  
District Court Judge



CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER GRANTING ELAINE WEIS' AND DEPARTMENT OF FINANCIAL INSTITUTIONS' MOTION FOR SUMMARY JUDGMENT was mailed, postage prepaid, this 4th day of June, to:

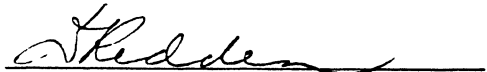
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Salt Lake City, UT 84111

Kent L. Brown  
Larry R. Hendricks  
2372 Bountiful Boulevard  
Bountiful, UT 84010



Tab 2



AGREEMENT

This Agreement, made and entered into this 26<sup>th</sup> day of December 1984, by and between the Department of Financial Institutions of the State of Utah ("the Department") and Larry R. Hendricks and Kent Brown ("the Acquirors").

PREAMBLE

This Agreement concerns Western Heritage Capital Corporation, a Utah financial institution holding company ("the Holding Company") and Western Heritage Thrift and Loan Company, a Utah-chartered industrial loan corporation ("the Thrift"), and is premised in all respects on a precedent and continuing finding by the Department that the Thrift is a "failing depository institution" as defined in Section 7-19-1(1) of the Utah Code Annotated (1953), that the Holding Company is a "failing depository institution holding company" as defined in Section 7-19-1(2) U.C.A., and that both the Thrift and the holding company are subject to the Department's jurisdiction under Title 7 of the U.C.A.

It is in the best interests of all parties concerned to transfer all of the stock of the Thrift owned by the Holding Company, which is 100% of the Thrift's stock, to another party which can offer the best prospects for continuing the Thrift's business and serving its depositors. The Acquirors are willing to take the Thrift's assets and liabilities, including all of the Thrift's deposit liabilities, and the Commissioner of Financial Institutions is willing to authorize and require the same, on terms and conditions set forth below.

The Commissioner has, following notice to the Holding Company and the Thrift, solicited merger and/or acquisition proposals from all parties whom she was aware might be interested in such transaction. To date, the only offer received is that from Larry R. Hendricks and Kent Brown. This offer currently represents the only alternative to closure and liquidation of the Thrift and Holding Company. All parties concerned would be best served if closure and liquidation could be avoided.

By the virtue of the premises stated above and in consideration of the mutual promises, warranties and agreements herein contained, the Department and the Acquirors now hereby agree as follows:

TERMS AND CONDITIONS OF AGREEMENT

SECTION 1 - - AGREEMENT TO CONSUMATE TRANSACTIONS. Subject to the terms and conditions of this Agreement, the parties hereto agree to consumate or cause to be consumated the transactions described in this Agreement and agree that the consumation of each transaction is conditional upon the consumation of all other required transactions.

SECTION 2 - - DEPARTMENT'S REPRESENTATIONS. As a direct inducement for the Acquirors to enter into and comply with this Agreement, the Department hereby represents that:



2.1 The Department has lawful supervisory and regulatory supervision over the Holding Company and the Thrift under Title 7 of the Utah Code Annotated (1953).

2.2 The Department has found the Thrift to be a "failing depository institution" as defined in Section 7-19-1(1) U.C.A., and has further found the Holding Company to be a "failing depository institution holding company" as defined in Section 7-19-1(2) U.C.A. In connection with Section 7-2-1(1) U.C.A., the Commissioner has further found that with respect to subpart (b) the Thrift has violated state law; with respect to subpart (c) the Thrift and the Holding Company are conducting their business in an unauthorized or unsafe manner; with respect to subpart (d) the Thrift and the Holding Company are not in a safe and sound condition to transact their business; with respect to subpart (e) the Thrift has failed to correct an impairment of capital within 90 days; with respect to subpart (f) the Thrift and the Holding Company have or are about to become insolvent; and with respect to subpart (k) the remedies provided in Sections 7-1-307, 7-1-308, or 7-1-313 are ineffective or impracticable to protect the interests of the depositors, creditors, members or shareholders of the institution, or other persons or to protect the interests of the public; and accordingly the Department is empowered to require the Thrift to merge or consolidate with, transfer its assets and liabilities to, or enter into an arrangement for transfer of its control to any other institution or entity approved or designated by the Commissioner pursuant to Section 7-2-1(2)(a) U.C.A.

2.3 Following Notice to the Thrift and the Holding Company dated November 5, 1984, in compliance with Section 7-1-802(3)(d), the Department solicited offers for merger with or acquisition of the Thrift and/or the Holding Company, or any portion of the assets and liabilities thereof from all parties which the Department is aware of who might be interested in such a transaction. The Acquirors's is the only final offer to acquire assets and liabilities of the Thrift received by the Department and represents the only alternative to closing and liquidating the Thrift.

2.4 The Department has no information or knowledge which would indicate any reasonable probability of significant error in the current balance sheet for the Thrift, a true and correct copy of which is attached hereto and incorporated herein as reference as Exhibit "A".

2.5 The Department has reviewed and does not disapprove of any terms or conditions of the Agreement between the Acquirors and the Industrial Loan Guaranty Corporation of Utah, a true and correct copy of which is attached hereto as Exhibit "B".

SECTION 3 - - DEPARTMENT'S OBLIGATION. Upon execution of this Agreement, the Department shall be obligated to enter appropriate and sufficient Findings and Conclusions in support of an Order pursuant to Section 7-2-1(2)(a) and to enter such Order requiring the Thrift and the Holding Company to immediately convey to the Acquirors all of the stock of the Thrift. Said findings, Conclusions and Order are attached hereto as Exhibit "C".

SECTION 4 - - REPRESENTATIONS BY ACQUIRORS. By executing this Agreement, the Acquirors acknowledge and represent the following:

4.1 They have not been restricted in any significant way from examining and auditing the Thrift, the holding company, and/or the Department's records concerning the same, and they are reasonably satisfied with the overall accuracy and completeness of the information and statements contained in the attached Exhibit "A".

4.2 In accordance with this Agreement with the ILGC, it will not convey, pledge or hypothecate any of its stock to the extent of a controlling interest as defined in Section 7-1-103(5) of the Utah Code Annotated in any manner or form prior to March 31, 1986 without the prior express approval of the Department and the ILGC.

SECTION 5 - - OBLIGATIONS OF THE ACQUIRORS. Upon execution of this Agreement, the Acquirors shall be obligated to:


5.1 Assume possession, control, and responsibility for the Thrift immediately following the execution of this Agreement.

5.2 Infuse \$400,000 cash as capital of the successor thrift at the time it assumes control of the Thrift's assets and liabilities, and infuse an additional \$150,000 cash or other assets expressly approved by the Department within 90 days thereafter.

SECTION 6 - - APPLICABLE LAW. This Agreement shall be construed in all respects in accordance with the laws, statutes, common law, and regulations of the State of Utah.

DATED this 26<sup>th</sup> day of December, 1984

The Department of Financial Institutions  
of the State of Utah:

  
\_\_\_\_\_  
ELAINE B. WEIS, Commissioner  
Department of Financial Institutions  
State of Utah

DATED this 26 day of December, 1984

*Larry R. Hendricks*

Larry R. Hendricks

Subscribed and sworn to before me this 26<sup>th</sup> day of December, 1984.

My Commission expires:

2-7-87

*George Sutton*

Notary Public

Residing in Salt Lake City, Utah

*Kent L. Brown*

Kent Brown

Subscribed and sworn to before me this 28<sup>th</sup> day of December, 1984

My Commission expires:

2-7-87

*George Sutton*

Notary Public

Residing in Salt Lake City, Utah

ASSETS

Cash and Investments

|                                |          |
|--------------------------------|----------|
| Demand Deposits & Cash on Hand | 9102,429 |
| Cash Investments               | 272,103  |
| Investment GNMA Pools          | 183,731  |

|                          |          |
|--------------------------|----------|
| Total Cash & Investments | 9557,263 |
|--------------------------|----------|

Loans & Other Receivables

|                       |           |
|-----------------------|-----------|
| Installment Loans     | 4,317,919 |
| Leases Receivable     | 1,603,373 |
| Factoring Receivable  | 439,240   |
| Real Estate Contracts | 996,237   |

|                         |           |
|-------------------------|-----------|
| Total Gross Receivables | 7,356,769 |
|-------------------------|-----------|

|                            |           |
|----------------------------|-----------|
| Accrued Interest           | 325,466   |
| Residual Value of Leases   | 137,742   |
| Unearned Discount on Loans |           |
| Leases and Factoring       | (451,227) |
| Allowance for Losses       | (515,245) |

|                       |           |
|-----------------------|-----------|
| Total Net Receivables | 6,828,383 |
|-----------------------|-----------|

Other Assets

|                                |           |
|--------------------------------|-----------|
| Building and Equipment         | 507,149   |
| Accumulated Depreciation       | (93,023)  |
| Real Estate held for Resale    | 1,377,020 |
| Other Property held for Resale | 104,034   |
| Other Assets                   | 73,957    |

|                    |           |
|--------------------|-----------|
| Total Other Assets | 1,969,137 |
|--------------------|-----------|

TOTAL ASSETS

|            |
|------------|
| 11,396,444 |
|------------|

LIABILITIES

Deposits

|                          |             |
|--------------------------|-------------|
| Certificates of Deposit  | 100,000,000 |
| Passbook Deposits        | (1,000,000) |
| Accrued Interest on Term | 100,000     |
| Total Deposits           | 99,100,000  |

Current Liabilities

|                           |           |
|---------------------------|-----------|
| Accounts Payable          | (75,000)  |
| Security Deposits         | (44,687)  |
| Total Current Liabilities | (119,687) |

Long-Term Liabilities

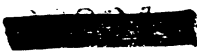
|                             |           |
|-----------------------------|-----------|
| Notes Payable               | (150,000) |
| Mortgages Payable           | (404,587) |
| Total Long-Term Liabilities | (554,587) |

TOTAL LIABILITIES (9,663,292)

STOCKHOLDERS EQUITY

|                           |           |
|---------------------------|-----------|
| Common Stock              | (500,000) |
| Surplus                   | (956,390) |
| Reserve for Contingencies | 0         |
| Undivided Profits         | 1,749,538 |
| Total Stockholders Equity | 293,148   |


TOTAL LIABILITIES AND STOCKHOLDERS EQUITY (\$9,370,144)



WESTERN HERITAGE THRIFT AND LOAN  
STATEMENT OF OPERATIONS

|                                       | For the<br>month ended<br>10-Nov-84 | For the period<br>July 1 thro<br>30-Nov-84 |
|---------------------------------------|-------------------------------------|--|
| <b>INCOME</b>                         |                                     |  |
| Interest on Loans, Leases & Factoring | \$104,733                           | \$517,422                                  |
| Interest on Investments               | 3,402                               | 18,390                                     |
| Other                                 | 9,025                               | 51,667                                     |
| <b>Total Income</b>                   | <b>117,159</b>                      | <b>587,739</b>                             |
| <b>OPERATION EXPENSES</b>             |                                     |  |
| Interest on Deposits                  | 77,048                              | 386,321                                    |
| Salaries                              | 15,441                              | 68,946                                     |
| Other Operation Expenses              | 60,535                              | 297,550                                    |
| <b>Total Operation Expenses</b>       | <b>153,024</b>                      | <b>772,817</b>                             |
| <b>PROFIT/(LOSS)</b>                  | <b>(\$35,865)</b>                   | <b>(\$185,077)</b>                         |

NOTE: Factoring income for November on these financial statements is comprised of \$9,240 which is October income and an estimate of \$13,000 income for November.

  
 Steven K. Andersen  
 Comptroller  
 Western Heritage Thrift & Loan

WESTERN HERITAGE TRUST AND LOAN  
 INCOME & EXPENSE DETAIL BREAKOUT  
 10-NOV-83

INCOME

|                               |                |                |
|-------------------------------|----------------|----------------|
| Interest Income on Loans      | \$66,456       | \$676,796      |
| Earned Lease Income           | 13,937         | 74,160         |
| Factoring                     | 22,340         | 18,517         |
| Other Loan Income             | 1,211          | 8,970          |
| Other Lease Income            | 3,679          | 12,412         |
| Investment Income             | 3,402          | 18,890         |
| Rent on ORE                   | 3,648          | 18,311         |
| Credit Life & A/H             | 462            | 3,236          |
| Other                         | 25             | 6,295          |
| Gain on sale of Property held | (0)            | (1,634)        |
| Gain on sale of ORE           | (0)            | 6,258          |
| <b>Total Income</b>           | <b>117,157</b> | <b>887,759</b> |

EXPENSES

|                           |                |                |
|---------------------------|----------------|----------------|
| Interest on Deposits      | 77,048         | 386,321        |
| Loan & Lease Cost         | 21             | 16,393         |
| Other Cost of Money       | 2,619          | 14,078         |
| Salaries                  | 15,441         | 88,984         |
| Data Processing           | 1,705          | 7,798          |
| Advertising               | 476            | 680            |
| Administration Fee        | 7,000          | 35,000         |
| Audit                     | 11,600         | 19,100         |
| Bad Debt                  | 0              | 0              |
| Depreciation              | 3,605          | 17,814         |
| Professional Services     | 4,500          | 24,535         |
| Interest on ORE Mortgages | 4,829          | 27,170         |
| Interest                  | 3,024          | 15,000         |
| Legal                     | 2,316          | 17,001         |
| Land Lease                | 1,500          | 7,000          |
| Rent                      | 593            | 2,000          |
| Repair & Maint DA Sign    | 505            | 2,000          |
| Taxes                     | 3,817          | 19,100         |
| Printing                  | 3              | 0              |
| Other                     | 0,119          | 14,117         |
| <b>TOTAL EXPENSES</b>     | <b>153,024</b> | <b>771,002</b> |



Tab 3

Western Heritage Thrift and Loan  
Projected Balance Sheet

|  | DEC-84             | JAN-85              | FEB-85              | MAR-85              | APR-85              | MAY-85              | JUN-85              | JUL-85              | AUG-85              | SEP-85              | OCT-85              | NOV-85              | DEC-85              |
|--|--------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| <b>CASH:</b>                                       |                    |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Cash   | \$100,000          | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           |
| Cash Investments                                   | 325,000            | 325,000             | 340,000             | 355,000             | 370,000             | 385,000             | 400,000             | 415,000             | 430,000             | 445,000             | 460,000             | 475,000             | 490,000             |
| <b>TOTAL CASH</b>                                  | <b>425,000</b>     | <b>425,000</b>      | <b>440,000</b>      | <b>455,000</b>      | <b>470,000</b>      | <b>485,000</b>      | <b>500,000</b>      | <b>515,000</b>      | <b>530,000</b>      | <b>545,000</b>      | <b>560,000</b>      | <b>575,000</b>      | <b>590,000</b>      |
| <b>RECEIVABLES:</b>                                |                    |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Installment Loans                                  | 5,920,000          | 5,689,463           | 5,642,483           | 5,596,839           | 5,552,791           | 5,510,288           | 5,469,324           | 5,429,945           | 5,392,163           | 5,355,999           | 5,321,476           | 5,288,613           | 5,257,434           |
| Accrued Interest                                   | 120,000            | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             |
| Factoring  | 330,000            | 345,000             | 360,000             | 375,000             | 390,000             | 405,000             | 420,000             | 435,000             | 450,000             | 465,000             | 480,000             | 495,000             | 510,000             |
| Leases   | 1,500,000          | 1,500,000           | 1,700,000           | 1,900,000           | 2,100,000           | 2,300,000           | 2,500,000           | 2,700,000           | 2,900,000           | 3,100,000           | 3,300,000           | 3,500,000           | 3,700,000           |
| ILBC Loss Guarantee                                | 0                  | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             |
| Allowance for Loss                                 | (1,200,000)        | (1,180,000)         | (1,160,000)         | (1,140,000)         | (1,120,000)         | (1,100,000)         | (1,080,000)         | (1,060,000)         | (1,040,000)         | (1,020,000)         | (1,000,000)         | (980,000)           | (960,000)           |
| <b>TOTAL RECEIVABLES</b>                           | <b>6,670,000</b>   | <b>6,674,463</b>    | <b>6,862,483</b>    | <b>7,051,839</b>    | <b>7,242,791</b>    | <b>7,435,288</b>    | <b>7,629,324</b>    | <b>7,824,945</b>    | <b>8,022,163</b>    | <b>8,220,999</b>    | <b>8,421,476</b>    | <b>8,623,613</b>    | <b>8,827,434</b>    |
| <b>FIXED ASSETS:</b>                               |                    |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Fixed Assets                                       | 604,000            | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             |
| Accumulated Depreciation                           | 0                  | (3,600)             | (7,200)             | (10,800)            | (14,400)            | (18,000)            | (21,600)            | (25,200)            | (28,800)            | (32,400)            | (36,000)            | (39,600)            | (43,200)            |
| <b>NET FIXED ASSETS</b>                            | <b>604,000</b>     | <b>600,400</b>      | <b>596,800</b>      | <b>593,200</b>      | <b>589,600</b>      | <b>586,000</b>      | <b>582,400</b>      | <b>578,800</b>      | <b>575,200</b>      | <b>571,600</b>      | <b>568,000</b>      | <b>564,400</b>      | <b>560,800</b>      |
| <b>OTHER ASSETS:</b>                               |                    |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Real Estate for Resale                             | 1,263,000          | 1,233,000           | 1,203,000           | 1,173,000           | 1,143,000           | 1,113,000           | 1,083,000           | 1,053,000           | 1,023,000           | 993,000             | 963,000             | 933,000             | 903,000             |
| Other Property for Resale                          | 85,000             | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              |
| N.W. Certificate                                   | 0                  | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           |
| Other Assets                                       | 45,000             | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              |
| Goodwill   | 550,000            | 546,944             | 543,889             | 540,833             | 537,778             | 534,722             | 531,667             | 528,611             | 525,556             | 522,500             | 519,444             | 516,389             | 513,333             |
| <b>TOTAL OTHER ASSETS</b>                          | <b>1,943,000</b>   | <b>2,909,944</b>    | <b>2,876,889</b>    | <b>2,843,833</b>    | <b>2,810,778</b>    | <b>2,777,722</b>    | <b>2,744,667</b>    | <b>2,711,611</b>    | <b>2,678,556</b>    | <b>2,645,500</b>    | <b>2,612,444</b>    | <b>2,579,389</b>    | <b>2,546,333</b>    |
| <b>TOTAL ASSETS:</b>                               | <b>\$9,650,000</b> | <b>\$10,609,807</b> | <b>\$10,776,892</b> | <b>\$10,943,873</b> | <b>\$11,113,169</b> | <b>\$11,284,002</b> | <b>\$11,456,391</b> | <b>\$11,630,356</b> | <b>\$11,805,918</b> | <b>\$11,983,899</b> | <b>\$12,161,920</b> | <b>\$12,342,402</b> | <b>\$12,524,567</b> |
| <b>LIABILITIES:</b>                                |                    |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Accounts Payable                                   | \$100,000          | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           |
| Accrued Interest on Deposits                       | 200,000            | 200,000             | 205,000             | 210,000             | 215,000             | 220,000             | 225,000             | 230,000             | 235,000             | 240,000             | 245,000             | 250,000             | 255,000             |
| <b>THRIFT DEPOSITS &amp; LONG-TERM LIABILITIES</b> |                    |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Savings  | 1,700,000          | 1,700,000           | 1,750,000           | 1,800,000           | 1,850,000           | 1,900,000           | 1,950,000           | 2,000,000           | 2,050,000           | 2,100,000           | 2,150,000           | 2,200,000           | 2,250,000           |
| Thrift Certificates                                | 6,300,000          | 6,300,000           | 6,450,000           | 6,600,000           | 6,750,000           | 6,900,000           | 7,050,000           | 7,200,000           | 7,350,000           | 7,500,000           | 7,650,000           | 7,800,000           | 7,950,000           |
| Notes Payable                                      | 800,000            | 790,000             | 780,000             | 770,000             | 760,000             | 750,000             | 740,000             | 730,000             | 720,000             | 710,000             | 700,000             | 690,000             | 680,000             |
| <b>TOTAL LIABILITIES</b>                           | <b>9,100,000</b>   | <b>9,090,000</b>    | <b>9,285,000</b>    | <b>9,480,000</b>    | <b>9,675,000</b>    | <b>9,870,000</b>    | <b>10,065,000</b>   | <b>10,260,000</b>   | <b>10,455,000</b>   | <b>10,650,000</b>   | <b>10,845,000</b>   | <b>11,040,000</b>   | <b>11,235,000</b>   |
| <b>STOCKHOLDERS EQUITY</b>                         |                    |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Common Stock                                       | 550,000            | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             |
| N.W. Certificate                                   | 0                  | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           | 1,000,000           |
| Undivided Profits                                  | 0                  | (30,193)            | (58,908)            | (86,127)            | (111,831)           | (135,998)           | (158,609)           | (179,644)           | (199,882)           | (216,901)           | (233,880)           | (247,598)           | (260,433)           |
| <b>TOTAL STOCKHOLDERS EQUITY</b>                   | <b>550,000</b>     | <b>1,519,807</b>    | <b>1,491,092</b>    | <b>1,463,873</b>    | <b>1,438,169</b>    | <b>1,414,002</b>    | <b>1,391,391</b>    | <b>1,370,356</b>    | <b>1,350,918</b>    | <b>1,333,899</b>    | <b>1,316,920</b>    | <b>1,302,402</b>    | <b>1,289,567</b>    |
| <b>TOTAL LIABILITIES AND STOCKHOLDERS EQUITY</b>   | <b>\$9,650,000</b> | <b>\$10,609,807</b> | <b>\$10,776,892</b> | <b>\$10,943,873</b> | <b>\$11,113,169</b> | <b>\$11,284,002</b> | <b>\$11,456,391</b> | <b>\$11,630,356</b> | <b>\$11,805,918</b> | <b>\$11,983,899</b> | <b>\$12,161,920</b> | <b>\$12,342,402</b> | <b>\$12,524,567</b> |

Exhibit "2"

Western Heritage Thrift and Loan  
Projected Balance Sheet

|  | JAN-86              | FEB-86              | MAR-86              | APR-86              | MAY-86              | JUN-86              | JUL-86              | AUG-86              | SEP-86              | OCT-86              | NOV-86              | DEC-86              |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| <b>CASH:</b>                                       |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Cash   | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           |
| Cash Investments                                   | 505,000             | 520,000             | 535,000             | 550,000             | 565,000             | 580,000             | 595,000             | 610,000             | 625,000             | 640,000             | 655,000             | 670,000             |
| <b>TOTAL CASH</b>                                  | <b>605,000</b>      | <b>620,000</b>      | <b>635,000</b>      | <b>650,000</b>      | <b>665,000</b>      | <b>680,000</b>      | <b>695,000</b>      | <b>710,000</b>      | <b>725,000</b>      | <b>740,000</b>      | <b>755,000</b>      | <b>770,000</b>      |
| <b>RECEIVABLES:</b>                                |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Installment Loans                                  | 4,719,291           | 4,682,755           | 4,647,847           | 4,614,589           | 4,583,002           | 4,553,109           | 4,545,235           | 4,539,408           | 4,535,655           | 4,534,003           | 4,534,481           | 4,537,117           |
| Accrued Interest                                   | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             |
| Factoring  | 525,000             | 540,000             | 555,000             | 570,000             | 585,000             | 600,000             | 615,000             | 630,000             | 645,000             | 660,000             | 675,000             | 690,000             |
| Leases   | 3,900,000           | 4,100,000           | 4,300,000           | 4,500,000           | 4,700,000           | 4,900,000           | 5,100,000           | 5,300,000           | 5,500,000           | 5,700,000           | 5,900,000           | 6,100,000           |
| ILGC Loss Guarantee                                | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             | 200,000             |
| Allowance for Loss                                 | (440,000)           | (420,000)           | (400,000)           | (380,000)           | (360,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           |
| <b>TOTAL RECEIVABLES</b>                           | <b>9,024,291</b>    | <b>9,222,755</b>    | <b>9,422,847</b>    | <b>9,624,589</b>    | <b>9,828,002</b>    | <b>10,033,109</b>   | <b>10,240,235</b>   | <b>10,449,408</b>   | <b>10,660,655</b>   | <b>10,874,003</b>   | <b>11,089,481</b>   | <b>11,307,117</b>   |
| <b>FIXED ASSETS:</b>                               |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Fixed Assets                                       | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             |
| Accumulated Depreciation                           | (46,000)            | (50,400)            | (54,000)            | (57,600)            | (61,200)            | (64,800)            | (68,400)            | (72,000)            | (75,600)            | (79,200)            | (82,800)            | (86,400)            |
| <b>NET FIXED ASSETS</b>                            | <b>557,200</b>      | <b>553,600</b>      | <b>550,000</b>      | <b>546,400</b>      | <b>542,800</b>      | <b>539,200</b>      | <b>535,600</b>      | <b>532,000</b>      | <b>528,400</b>      | <b>524,800</b>      | <b>521,200</b>      | <b>517,600</b>      |
| <b>OTHER ASSETS:</b>                               |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Real Estate for Resale                             | 873,000             | 843,000             | 813,000             | 783,000             | 753,000             | 723,000             | 693,000             | 663,000             | 633,000             | 603,000             | 573,000             | 543,000             |
| Other Property for Resale                          | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              |
| N.W. Certificate                                   | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           |
| Other Assets                                       | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              |
| Goodwill   | 510,278             | 507,222             | 504,167             | 501,111             | 498,056             | 495,000             | 491,944             | 488,889             | 485,833             | 482,778             | 479,722             | 476,667             |
| <b>TOTAL OTHER ASSETS</b>                          | <b>3,013,278</b>    | <b>2,980,222</b>    | <b>2,947,167</b>    | <b>2,914,111</b>    | <b>2,881,056</b>    | <b>2,848,000</b>    | <b>2,814,944</b>    | <b>2,781,889</b>    | <b>2,748,833</b>    | <b>2,715,778</b>    | <b>2,682,722</b>    | <b>2,649,667</b>    |
| <b>TOTAL ASSETS:</b>                               | <b>\$13,199,769</b> | <b>\$13,376,577</b> | <b>\$13,555,014</b> | <b>\$13,735,100</b> | <b>\$13,916,858</b> | <b>\$14,100,309</b> | <b>\$14,285,708</b> | <b>\$14,473,297</b> | <b>\$14,662,889</b> | <b>\$14,854,581</b> | <b>\$15,048,403</b> | <b>\$15,244,383</b> |
| <b>LIABILITIES:</b>                                |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Accounts Payable                                   | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           |
| Accrued Interest on Deposits                       | 260,000             | 265,000             | 270,000             | 275,000             | 280,000             | 285,000             | 290,000             | 295,000             | 300,000             | 305,000             | 310,000             | 315,000             |
| <b>THRIFT DEPOSITS &amp; LONG-TERM LIABILITIES</b> |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Savings  | 2,300,000           | 2,350,000           | 2,400,000           | 2,450,000           | 2,500,000           | 2,550,000           | 2,600,000           | 2,650,000           | 2,700,000           | 2,750,000           | 2,800,000           | 2,850,000           |
| Thrift Certificates                                | 8,100,000           | 8,250,000           | 8,400,000           | 8,550,000           | 8,700,000           | 8,850,000           | 9,000,000           | 9,150,000           | 9,300,000           | 9,450,000           | 9,600,000           | 9,750,000           |
| Notes Payable                                      | 670,000             | 660,000             | 650,000             | 640,000             | 630,000             | 620,000             | 610,000             | 600,000             | 590,000             | 580,000             | 570,000             | 560,000             |
| <b>TOTAL LIABILITIES</b>                           | <b>11,430,000</b>   | <b>11,625,000</b>   | <b>11,820,000</b>   | <b>12,015,000</b>   | <b>12,210,000</b>   | <b>12,405,000</b>   | <b>12,600,000</b>   | <b>12,795,000</b>   | <b>12,990,000</b>   | <b>13,185,000</b>   | <b>13,380,000</b>   | <b>13,575,000</b>   |
| <b>STOCKHOLDERS EQUITY</b>                         |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Common Stock                                       | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             |
| N.W. Certificate                                   | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           | 1,500,000           |
| Undivided Profits                                  | (280,231)           | (298,423)           | (314,986)           | (329,900)           | (343,142)           | (354,691)           | (364,220)           | (371,783)           | (377,111)           | (380,419)           | (381,597)           | (380,617)           |
| <b>TOTAL STOCKHOLDERS EQUITY</b>                   | <b>1,769,769</b>    | <b>1,751,577</b>    | <b>1,735,014</b>    | <b>1,720,100</b>    | <b>1,706,858</b>    | <b>1,695,309</b>    | <b>1,685,780</b>    | <b>1,678,297</b>    | <b>1,672,889</b>    | <b>1,669,581</b>    | <b>1,668,403</b>    | <b>1,669,383</b>    |
| <b>TOTAL LIABILITIES AND STOCKHOLDERS EQUITY</b>   | <b>\$13,199,769</b> | <b>\$13,376,577</b> | <b>\$13,555,014</b> | <b>\$13,735,100</b> | <b>\$13,916,858</b> | <b>\$14,100,309</b> | <b>\$14,285,708</b> | <b>\$14,473,297</b> | <b>\$14,662,889</b> | <b>\$14,854,581</b> | <b>\$15,048,403</b> | <b>\$15,244,383</b> |

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| Western Heritage Thrift and Loan<br>Projected Balance Sheet | JAN-87              | FEB-87              | MAR-87              | APR-87              | MAY-87              | JUN-87              | JUL-87              | AUG-87              | SEP-87              | OCT-87              | NOV-87              | DEC-87              |
|---|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| <b>CASH:</b>  |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Cash  | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           |
| Cash Investments  | 687,500             | 705,000             | 722,500             | 740,000             | 757,500             | 775,000             | 792,500             | 810,000             | 827,500             | 845,000             | 862,500             | 880,000             |
| <b>TOTAL CASH</b>   | <b>787,500</b>      | <b>805,000</b>      | <b>822,500</b>      | <b>840,000</b>      | <b>857,500</b>      | <b>875,000</b>      | <b>892,500</b>      | <b>910,000</b>      | <b>927,500</b>      | <b>945,000</b>      | <b>962,500</b>      | <b>980,000</b>      |
| <b>RECEIVABLES:</b>   |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Installment Loans   | 4,710,854           | 4,686,417           | 4,663,829           | 4,643,116           | 4,624,301           | 4,607,411           | 4,592,470           | 4,579,503           | 4,568,538           | 4,559,601           | 4,552,718           | 4,547,917           |
| Accrued Interest  | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             | 120,000             |
| Factoring   | 785,000             | 720,000             | 735,000             | 750,000             | 765,000             | 780,000             | 795,000             | 810,000             | 825,000             | 840,000             | 855,000             | 870,000             |
| Leases  | 6,300,000           | 6,500,000           | 6,700,000           | 6,900,000           | 7,100,000           | 7,300,000           | 7,500,000           | 7,700,000           | 7,900,000           | 8,100,000           | 8,300,000           | 8,500,000           |
| ILGC Loss Guarantee   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   | 0                   |
| Allowance for Loss  | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           | (340,000)           |
| <b>TOTAL RECEIVABLES</b>                                    | <b>11,495,854</b>   | <b>11,686,417</b>   | <b>11,878,829</b>   | <b>12,073,116</b>   | <b>12,269,301</b>   | <b>12,467,411</b>   | <b>12,667,470</b>   | <b>12,869,503</b>   | <b>13,073,538</b>   | <b>13,279,601</b>   | <b>13,487,718</b>   | <b>13,697,917</b>   |
| <b>FIXED ASSETS:</b>  |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Fixed Assets  | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             | 604,000             |
| Accumulated Depreciation                                    | (90,000)            | (93,600)            | (97,200)            | (100,800)           | (104,400)           | (108,000)           | (111,600)           | (115,200)           | (118,800)           | (122,400)           | (126,000)           | (129,600)           |
| <b>NET FIXED ASSETS</b>                                     | <b>514,000</b>      | <b>510,400</b>      | <b>506,800</b>      | <b>503,200</b>      | <b>499,600</b>      | <b>496,000</b>      | <b>492,400</b>      | <b>488,800</b>      | <b>485,200</b>      | <b>481,600</b>      | <b>478,000</b>      | <b>474,400</b>      |
| <b>OTHER ASSETS:</b>  |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Real Estate for Resale                                      | 543,000             | 543,000             | 543,000             | 543,000             | 543,000             | 543,000             | 543,000             | 543,000             | 543,000             | 543,000             | 543,000             | 543,000             |
| Other Property for Resale                                   | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              | 85,000              |
| M.W. Certificate  | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           |
| Other Assets  | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              | 45,000              |
| Goodwill  | 473,611             | 470,556             | 467,500             | 464,444             | 461,389             | 458,333             | 455,278             | 452,222             | 449,167             | 446,111             | 443,056             | 440,000             |
| <b>TOTAL OTHER ASSETS</b>                                   | <b>3,146,611</b>    | <b>3,143,556</b>    | <b>3,140,500</b>    | <b>3,137,444</b>    | <b>3,134,389</b>    | <b>3,131,333</b>    | <b>3,128,278</b>    | <b>3,125,222</b>    | <b>3,122,167</b>    | <b>3,119,111</b>    | <b>3,116,056</b>    | <b>3,113,000</b>    |
| <b>TOTAL ASSETS:</b>  | <b>\$15,943,965</b> | <b>\$16,145,372</b> | <b>\$16,348,629</b> | <b>\$16,553,760</b> | <b>\$16,760,790</b> | <b>\$16,969,744</b> | <b>\$17,180,647</b> | <b>\$17,393,526</b> | <b>\$17,608,405</b> | <b>\$17,825,312</b> | <b>\$18,044,274</b> | <b>\$18,265,317</b> |
| <b>LIABILITIES:</b>   |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Accounts Payable  | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           | \$100,000           |
| Accrued Interest on Deposits                                | 320,000             | 325,000             | 330,000             | 335,000             | 340,000             | 345,000             | 350,000             | 355,000             | 360,000             | 365,000             | 370,000             | 375,000             |
| <b>THRIFT DEPOSITS &amp; LONG-TERM LIABILITIES</b>          |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Savings   | 2,900,000           | 2,950,000           | 3,000,000           | 3,050,000           | 3,100,000           | 3,150,000           | 3,200,000           | 3,250,000           | 3,300,000           | 3,350,000           | 3,400,000           | 3,450,000           |
| Thrift Certificates   | 9,900,000           | 10,050,000          | 10,200,000          | 10,350,000          | 10,500,000          | 10,650,000          | 10,800,000          | 10,950,000          | 11,100,000          | 11,250,000          | 11,400,000          | 11,550,000          |
| Notes Payable   | 550,000             | 540,000             | 530,000             | 520,000             | 510,000             | 500,000             | 490,000             | 480,000             | 470,000             | 460,000             | 450,000             | 440,000             |
| <b>TOTAL LIABILITIES</b>                                    | <b>13,770,000</b>   | <b>13,965,000</b>   | <b>14,160,000</b>   | <b>14,355,000</b>   | <b>14,550,000</b>   | <b>14,745,000</b>   | <b>14,940,000</b>   | <b>15,135,000</b>   | <b>15,330,000</b>   | <b>15,525,000</b>   | <b>15,720,000</b>   | <b>15,915,000</b>   |
| <b>STOCKHOLDERS EQUITY</b>                                  |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Common Stock  | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             | 550,000             |
| M.W. Certificate  | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           | 2,000,000           |
| Undivided Profits   | (376,035)           | (369,628)           | (361,371)           | (351,240)           | (339,210)           | (325,256)           | (309,353)           | (291,474)           | (271,595)           | (249,688)           | (225,726)           | (199,683)           |
| <b>TOTAL STOCKHOLDERS EQUITY</b>                            | <b>2,173,965</b>    | <b>2,180,372</b>    | <b>2,188,629</b>    | <b>2,198,760</b>    | <b>2,210,790</b>    | <b>2,224,744</b>    | <b>2,240,647</b>    | <b>2,258,526</b>    | <b>2,278,405</b>    | <b>2,300,312</b>    | <b>2,324,274</b>    | <b>2,350,317</b>    |
| <b>TOTAL LIABILITIES AND<br/>STOCKHOLDERS EQUITY</b>        | <b>\$15,943,965</b> | <b>\$16,145,372</b> | <b>\$16,348,629</b> | <b>\$16,553,760</b> | <b>\$16,760,790</b> | <b>\$16,969,744</b> | <b>\$17,180,647</b> | <b>\$17,393,526</b> | <b>\$17,608,405</b> | <b>\$17,825,312</b> | <b>\$18,044,274</b> | <b>\$18,265,317</b> |

Western Heritage Thrift and Loan  
Projected Income Statement

|                             | JAN-85            | FEB-85            | MAR-85            | APR-85            | MAY-85            | JUN-85            | JUL-85            | AUG-85            | SEP-85            | OCT-85            | NOV-85            | DEC-85            | TOTAL-1985         |
|-----------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| <b>INCOME:</b>              |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                    |
| Installment Loan Interest   | \$85,342          | \$84,636          | \$83,953          | \$83,292          | \$82,654          | \$82,040          | \$81,449          | \$80,882          | \$80,340          | \$79,822          | \$79,329          | \$78,862          | \$982,601          |
| Factoring                   | 15,525            | 16,200            | 16,875            | 17,550            | 18,225            | 18,900            | 19,575            | 20,250            | 20,925            | 21,600            | 22,275            | 22,950            | 230,850            |
| Lease Income                | 23,745            | 26,911            | 30,077            | 33,243            | 36,409            | 39,575            | 42,741            | 45,907            | 49,073            | 52,239            | 55,405            | 58,571            | 493,896            |
| Investment Interest         | 2,787             | 2,832             | 2,957             | 3,082             | 3,207             | 3,332             | 3,457             | 3,582             | 3,707             | 3,832             | 3,957             | 4,082             | 40,734             |
| DRE Rent                    | 4,482             | 4,295             | 4,188             | 4,081             | 3,973             | 3,866             | 3,759             | 3,652             | 3,545             | 3,438             | 3,331             | 3,224             | 45,753             |
| Late Charges                | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 36,000             |
| Loan Fees                   | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 24,000             |
| Other                       | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 18,000             |
| Provision for Stop Interest | (20,000)          | (19,500)          | (19,000)          | (18,500)          | (18,000)          | (17,500)          | (17,000)          | (16,500)          | (16,000)          | (15,500)          | (15,000)          | (14,500)          | (207,000)          |
| <b>TOTAL INCOME</b>         | <b>118,221</b>    | <b>121,874</b>    | <b>125,549</b>    | <b>129,247</b>    | <b>132,969</b>    | <b>136,713</b>    | <b>140,481</b>    | <b>144,273</b>    | <b>148,090</b>    | <b>151,931</b>    | <b>155,797</b>    | <b>159,688</b>    | <b>1,664,834</b>   |
| <b>EXPENSES:</b>            |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                    |
| Cost of Money               |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                    |
| Savings                     | 14,167            | 14,583            | 15,000            | 15,417            | 15,833            | 16,250            | 16,667            | 17,083            | 17,500            | 17,917            | 18,333            | 18,750            | 197,500            |
| Thrift Certificates         | 63,000            | 64,500            | 66,000            | 67,500            | 69,000            | 70,500            | 72,000            | 73,500            | 75,000            | 76,500            | 78,000            | 79,500            | 855,000            |
| Salaries                    | 18,113            | 18,219            | 18,325            | 18,432            | 18,539            | 18,647            | 18,756            | 18,866            | 18,976            | 19,086            | 19,198            | 19,310            | 224,467            |
| Provision for Loss          | 8,343             | 8,578             | 8,815             | 9,053             | 9,294             | 9,537             | 9,781             | 10,028            | 10,276            | 10,527            | 10,780            | 11,034            | 116,046            |
| Goodwill Amortization       | 3,856             | 3,856             | 3,856             | 3,856             | 3,856             | 3,856             | 3,856             | 3,856             | 3,856             | 3,856             | 3,856             | 3,856             | 36,667             |
| Depreciation                | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 43,200             |
| Advertising                 | 2,500             | 2,515             | 2,529             | 2,544             | 2,559             | 2,574             | 2,589             | 2,604             | 2,619             | 2,634             | 2,650             | 2,665             | 30,901             |
| Auto Travel & Entertainment | 1,783             | 1,713             | 1,723             | 1,733             | 1,743             | 1,753             | 1,763             | 1,774             | 1,784             | 1,795             | 1,805             | 1,816             | 21,105             |
| Professional Fees           | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 36,000             |
| Office Supplies             | 1,000             | 1,006             | 1,012             | 1,018             | 1,024             | 1,030             | 1,036             | 1,042             | 1,048             | 1,054             | 1,060             | 1,066             | 12,393             |
| Payroll Taxes               | 2,174             | 2,186             | 2,199             | 2,212             | 2,225             | 2,238             | 2,251             | 2,264             | 2,277             | 2,290             | 2,304             | 2,317             | 26,936             |
| Data Processing             | 1,600             | 1,609             | 1,619             | 1,628             | 1,638             | 1,647             | 1,657             | 1,666             | 1,676             | 1,686             | 1,696             | 1,706             | 19,828             |
| ILBC Assessments            | 1,750             | 1,750             | 1,750             | 1,750             | 1,750             | 1,750             | 1,750             | 1,750             | 1,750             | 1,750             | 1,750             | 1,750             | 21,000             |
| Conventions                 | 150               | 150               | 150               | 150               | 150               | 150               | 150               | 150               | 150               | 150               | 150               | 150               | 1,800              |
| Telephone                   | 1,500             | 1,509             | 1,518             | 1,526             | 1,535             | 1,544             | 1,553             | 1,562             | 1,571             | 1,581             | 1,590             | 1,599             | 18,500             |
| Insurance-Health            | 1,753             | 1,763             | 1,774             | 1,784             | 1,794             | 1,805             | 1,815             | 1,826             | 1,836             | 1,847             | 1,858             | 1,869             | 21,724             |
| Interest on Notes Payable   | 7,242             | 7,150             | 7,058             | 6,967             | 6,875             | 6,783             | 6,692             | 6,600             | 6,508             | 6,417             | 6,325             | 6,233             | 80,850             |
| Other                       | 554               | 557               | 560               | 564               | 567               | 570               | 574               | 577               | 580               | 584               | 587               | 591               | 6,865              |
| Memberships                 | 250               | 250               | 250               | 250               | 250               | 250               | 250               | 250               | 250               | 250               | 250               | 250               | 3,000              |
| Property Tax                | 500               | 503               | 506               | 509               | 512               | 515               | 518               | 521               | 524               | 527               | 530               | 533               | 6,196              |
| Land Lease                  | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 18,000             |
| Janitorial                  | 245               | 246               | 248               | 249               | 251               | 252               | 254               | 255               | 257               | 258               | 260               | 261               | 3,036              |
| Employee Benefits           | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 12,000             |
| Postage                     | 480               | 483               | 486               | 488               | 491               | 494               | 497               | 500               | 503               | 506               | 509               | 512               | 5,948              |
| Repair & Maintenance        | 1,200             | 1,207             | 1,214             | 1,221             | 1,228             | 1,235             | 1,243             | 1,250             | 1,257             | 1,264             | 1,272             | 1,279             | 14,871             |
| Rent                        | 853               | 853               | 853               | 853               | 853               | 853               | 853               | 853               | 853               | 853               | 853               | 853               | 10,236             |
| Taxes & Licenses            | 200               | 201               | 202               | 204               | 205               | 206               | 207               | 208               | 210               | 211               | 212               | 213               | 2,479              |
| Dues & Subscriptions        | 282               | 284               | 285               | 287               | 289               | 290               | 292               | 294               | 295               | 297               | 299               | 301               | 3,495              |
| Utilities                   | 700               | 704               | 708               | 712               | 716               | 721               | 725               | 729               | 733               | 738               | 742               | 746               | 8,675              |
| Legal & Accounting          | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 24,000             |
| DRE Expense                 | 3,500             | 3,415             | 3,330             | 3,245             | 3,159             | 3,074             | 2,989             | 2,904             | 2,819             | 2,734             | 2,648             | 2,563             | 36,379             |
| Board and Chairman Fees     | 500               | 500               | 500               | 500               | 500               | 500               | 500               | 500               | 500               | 500               | 500               | 500               | 6,000              |
| <b>TOTAL EXPENSE</b>        | <b>148,414</b>    | <b>150,590</b>    | <b>152,769</b>    | <b>154,951</b>    | <b>157,136</b>    | <b>159,324</b>    | <b>161,516</b>    | <b>163,711</b>    | <b>165,909</b>    | <b>168,110</b>    | <b>170,315</b>    | <b>172,523</b>    | <b>1,925,266</b>   |
| <b>NET INCOME</b>           | <b>(\$30,193)</b> | <b>(\$28,716)</b> | <b>(\$27,219)</b> | <b>(\$25,703)</b> | <b>(\$24,167)</b> | <b>(\$22,611)</b> | <b>(\$21,035)</b> | <b>(\$19,437)</b> | <b>(\$17,819)</b> | <b>(\$16,179)</b> | <b>(\$14,518)</b> | <b>(\$12,835)</b> | <b>(\$268,433)</b> |

See accompanying "Summary of Significant Projection Assumptions" and Compilation Report

| Western Heritage Thrift and Loan<br>Projected Income Statement | JAN-86            | FEB-86            | MAR-86            | APR-86            | MAY-86            | JUN-86            | JUL-86           | AUG-86           | SEP-86           | OCT-86           | NOV-86           | DEC-86         | TOTAL-1986         |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|----------------|--------------------|
| <b>INCOME:</b>   |                   |                   |                   |                   |                   |                   |                  |                  |                  |                  |                  |                |                    |
| Installment Loan Interest                                      | \$70,789          | \$70,241          | \$69,718          | \$69,219          | \$68,745          | \$68,297          | \$68,179         | \$68,091         | \$68,035         | \$68,010         | \$68,017         | \$68,057       | \$825,397          |
| Factoring  | 23,625            | 24,300            | 24,975            | 25,650            | 26,325            | 27,000            | 27,675           | 28,350           | 29,025           | 29,700           | 30,375           | 31,050         | 328,050            |
| Lease Income   | 61,737            | 64,903            | 68,069            | 71,235            | 74,401            | 77,567            | 80,733           | 83,899           | 87,065           | 90,231           | 93,397           | 96,563         | 949,800            |
| Investment Interest  | 4,207             | 4,332             | 4,457             | 4,582             | 4,706             | 4,831             | 4,956            | 5,081            | 5,206            | 5,331            | 5,456            | 5,581          | 58,727             |
| ORE Rent   | 3,117             | 3,010             | 2,902             | 2,795             | 2,688             | 2,581             | 2,474            | 2,367            | 2,260            | 2,153            | 2,046            | 1,939          | 30,331             |
| Late Charges   | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000             | 3,000            | 3,000            | 3,000            | 3,000            | 3,000            | 3,000          | 36,000             |
| Loan Fees  | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000            | 2,000            | 2,000            | 2,000            | 2,000            | 2,000          | 24,000             |
| Other  | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500            | 1,500            | 1,500            | 1,500            | 1,500            | 1,500          | 18,000             |
| Provision for Stop Interest                                    | (14,000)          | (13,500)          | (13,000)          | (12,500)          | (12,000)          | (11,500)          | (11,000)         | (10,500)         | (10,000)         | (9,500)          | (9,000)          | (8,500)        | (135,000)          |
| <b>TOTAL INCOME</b>  | <b>155,975</b>    | <b>159,785</b>    | <b>163,621</b>    | <b>167,401</b>    | <b>171,366</b>    | <b>175,276</b>    | <b>179,517</b>   | <b>183,788</b>   | <b>188,091</b>   | <b>192,425</b>   | <b>196,791</b>   | <b>201,189</b> | <b>2,135,305</b>   |
| <b>EXPENSES:</b>   |                   |                   |                   |                   |                   |                   |                  |                  |                  |                  |                  |                |                    |
| Cost of Money  |                   |                   |                   |                   |                   |                   |                  |                  |                  |                  |                  |                |                    |
| Savings  | 19,167            | 19,583            | 20,000            | 20,417            | 20,833            | 21,250            | 21,667           | 22,083           | 22,500           | 22,917           | 23,333           | 23,750         | 257,500            |
| Thrift Certificates  | 81,000            | 82,500            | 84,000            | 85,500            | 87,000            | 88,500            | 90,000           | 91,500           | 93,000           | 94,500           | 96,000           | 97,500         | 1,071,000          |
| Salaries   | 19,422            | 19,536            | 19,650            | 19,764            | 19,880            | 19,996            | 20,112           | 20,229           | 20,347           | 20,466           | 20,586           | 20,706         | 240,694            |
| Provision for Loss   | 11,280            | 11,528            | 11,779            | 12,031            | 12,285            | 12,541            | 12,800           | 13,062           | 13,326           | 13,593           | 13,862           | 14,134         | 152,221            |
| Goodwill Amortization  | 3,056             | 3,056             | 3,056             | 3,056             | 3,056             | 3,056             | 3,056            | 3,056            | 3,056            | 3,056            | 3,056            | 3,056          | 36,667             |
| Depreciation   | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600             | 3,600            | 3,600            | 3,600            | 3,600            | 3,600            | 3,600          | 43,200             |
| Advertising  | 2,681             | 2,696             | 2,712             | 2,728             | 2,744             | 2,760             | 2,776            | 2,792            | 2,808            | 2,825            | 2,841            | 2,858          | 33,221             |
| Auto Travel & Entertainment                                    | 1,826             | 1,837             | 1,847             | 1,858             | 1,869             | 1,880             | 1,891            | 1,902            | 1,913            | 1,924            | 1,935            | 1,947          | 22,630             |
| Professional Fees  | 3,300             | 3,300             | 3,300             | 3,300             | 3,300             | 3,300             | 3,300            | 3,300            | 3,300            | 3,300            | 3,300            | 3,300          | 39,600             |
| Office Supplies  | 1,072             | 1,079             | 1,085             | 1,091             | 1,098             | 1,104             | 1,110            | 1,117            | 1,123            | 1,130            | 1,137            | 1,143          | 13,288             |
| Payroll Taxes  | 2,331             | 2,344             | 2,358             | 2,372             | 2,386             | 2,399             | 2,413            | 2,428            | 2,442            | 2,456            | 2,470            | 2,485          | 28,883             |
| Data Processing  | 1,716             | 1,726             | 1,736             | 1,746             | 1,756             | 1,766             | 1,777            | 1,787            | 1,797            | 1,808            | 1,818            | 1,829          | 21,262             |
| ILGC Assessments   | 2,500             | 2,500             | 2,500             | 2,500             | 2,500             | 2,500             | 2,500            | 2,500            | 2,500            | 2,500            | 2,500            | 2,500          | 30,000             |
| Conventions  | 150               | 150               | 150               | 150               | 150               | 150               | 150              | 150              | 150              | 150              | 150              | 150            | 1,800              |
| Telephone  | 1,608             | 1,618             | 1,627             | 1,637             | 1,646             | 1,656             | 1,666            | 1,675            | 1,685            | 1,695            | 1,705            | 1,715          | 19,933             |
| Insurance-Health   | 1,880             | 1,891             | 1,902             | 1,913             | 1,924             | 1,935             | 1,946            | 1,958            | 1,969            | 1,981            | 1,992            | 2,004          | 23,295             |
| Interest on Notes Payable                                      | 6,142             | 6,050             | 5,958             | 5,867             | 5,775             | 5,683             | 5,592            | 5,500            | 5,408            | 5,317            | 5,225            | 5,133          | 67,650             |
| Other  | 594               | 598               | 601               | 605               | 608               | 612               | 615              | 619              | 622              | 626              | 630              | 633            | 7,362              |
| Memberships  | 250               | 250               | 250               | 250               | 250               | 250               | 250              | 250              | 250              | 250              | 250              | 250            | 3,000              |
| Property Tax   | 536               | 539               | 542               | 546               | 549               | 552               | 555              | 558              | 562              | 565              | 568              | 572            | 6,644              |
| Land Lease   | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500             | 1,500            | 1,500            | 1,500            | 1,500            | 1,500            | 1,500          | 18,000             |
| Janitorial   | 263               | 264               | 266               | 267               | 269               | 270               | 272              | 274              | 275              | 277              | 278              | 280            | 3,256              |
| Employee Benefits  | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000             | 1,000            | 1,000            | 1,000            | 1,000            | 1,000            | 1,000          | 12,000             |
| Postage  | 515               | 518               | 521               | 524               | 527               | 530               | 533              | 536              | 539              | 542              | 546              | 549            | 6,378              |
| Repair & Maintenance   | 1,287             | 1,294             | 1,302             | 1,309             | 1,317             | 1,325             | 1,332            | 1,340            | 1,348            | 1,356            | 1,364            | 1,372          | 15,946             |
| Rent   | 853               | 853               | 853               | 853               | 853               | 853               | 853              | 853              | 853              | 853              | 853              | 853            | 10,236             |
| Taxes & Licenses   | 214               | 216               | 217               | 218               | 220               | 221               | 222              | 223              | 225              | 226              | 227              | 229            | 2,658              |
| Dues & Subscriptions   | 302               | 304               | 306               | 308               | 310               | 311               | 313              | 315              | 317              | 319              | 320              | 322            | 3,747              |
| Utilities  | 751               | 755               | 759               | 764               | 768               | 773               | 777              | 782              | 786              | 791              | 796              | 800            | 9,302              |
| Legal & Accounting   | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000             | 2,000            | 2,000            | 2,000            | 2,000            | 2,000            | 2,000          | 24,000             |
| ORE Expense  | 2,478             | 2,393             | 2,308             | 2,223             | 2,137             | 2,052             | 1,967            | 1,882            | 1,797            | 1,712            | 1,627            | 1,541          | 24,117             |
| Board and Chairman Fees  | 500               | 500               | 500               | 500               | 500               | 500               | 500              | 500              | 500              | 500              | 500              | 500            | 6,000              |
| <b>TOTAL EXPENSE</b>   | <b>175,773</b>    | <b>177,977</b>    | <b>180,184</b>    | <b>182,394</b>    | <b>184,608</b>    | <b>186,825</b>    | <b>189,046</b>   | <b>191,271</b>   | <b>193,500</b>   | <b>195,732</b>   | <b>197,969</b>   | <b>200,209</b> | <b>2,255,489</b>   |
| <b>NET INCOME</b>  | <b>(\$19,799)</b> | <b>(\$18,191)</b> | <b>(\$16,563)</b> | <b>(\$14,914)</b> | <b>(\$13,242)</b> | <b>(\$11,549)</b> | <b>(\$9,529)</b> | <b>(\$7,483)</b> | <b>(\$5,409)</b> | <b>(\$3,307)</b> | <b>(\$1,178)</b> | <b>\$900</b>   | <b>(\$120,184)</b> |

See accompanying "Summary of Significant Projection Assumptions" and Compilation Report

Western Heritage Thrift and Loan  
Projected Income Statement

|                             | JAN-87         | FEB-87         | MAR-87         | APR-87          | MAY-87          | JUN-87          | JUL-87          | AUG-87          | SEP-87          | OCT-87          | NOV-87          | DEC-87          | TOTAL-1987       |
|-----------------------------|----------------|----------------|----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|
| <b>INCOME:</b>              |                |                |                |                 |                 |                 |                 |                 |                 |                 |                 |                 |                  |
| Installment Loan Interest   | \$70,663       | \$70,296       | \$69,957       | \$69,647        | \$69,365        | \$69,111        | \$68,887        | \$68,693        | \$68,528        | \$68,394        | \$68,291        | \$68,219        | \$830,050        |
| Factoring                   | 31,725         | 32,400         | 33,075         | 33,750          | 34,425          | 35,100          | 35,775          | 36,450          | 37,125          | 37,800          | 38,475          | 39,150          | 425,250          |
| Lease Income                | 99,729         | 102,895        | 106,061        | 109,227         | 112,393         | 115,559         | 118,725         | 121,891         | 125,057         | 128,223         | 131,389         | 134,555         | 1,485,784        |
| Investment Interest         | 5,727          | 5,873          | 6,018          | 6,164           | 6,310           | 6,456           | 6,602           | 6,747           | 6,893           | 7,039           | 7,185           | 7,330           | 78,344           |
| ORE Rent                    | 1,939          | 1,939          | 1,939          | 1,939           | 1,939           | 1,939           | 1,939           | 1,939           | 1,939           | 1,939           | 1,939           | 1,939           | 23,262           |
| Late Charges                | 3,000          | 3,000          | 3,000          | 3,000           | 3,000           | 3,000           | 3,000           | 3,000           | 3,000           | 3,000           | 3,000           | 3,000           | 36,000           |
| Loan Fees                   | 2,000          | 2,000          | 2,000          | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 24,000           |
| Other                       | 1,500          | 1,500          | 1,500          | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 18,000           |
| Provision for Stop Interest | (8,000)        | (7,500)        | (7,000)        | (6,500)         | (6,000)         | (5,500)         | (5,000)         | (4,500)         | (4,000)         | (3,500)         | (3,000)         | (2,500)         | (63,000)         |
| <b>TOTAL INCOME</b>         | <b>288,282</b> | <b>212,402</b> | <b>216,550</b> | <b>220,726</b>  | <b>224,931</b>  | <b>229,164</b>  | <b>233,427</b>  | <b>237,719</b>  | <b>242,042</b>  | <b>246,394</b>  | <b>250,778</b>  | <b>255,193</b>  | <b>2,777,610</b> |
| <b>EXPENSES:</b>            |                |                |                |                 |                 |                 |                 |                 |                 |                 |                 |                 |                  |
| Cost of Money               |                |                |                |                 |                 |                 |                 |                 |                 |                 |                 |                 |                  |
| Savings                     | 24,167         | 24,583         | 25,000         | 25,417          | 25,833          | 26,250          | 26,667          | 27,083          | 27,500          | 27,917          | 28,333          | 28,750          | 317,500          |
| Thrift Certificates         | 99,000         | 100,500        | 102,000        | 103,500         | 105,000         | 106,500         | 108,000         | 109,500         | 111,000         | 112,500         | 114,000         | 115,500         | 1,287,000        |
| Salaries                    | 20,826         | 20,948         | 21,070         | 21,193          | 21,317          | 21,441          | 21,566          | 21,692          | 21,818          | 21,946          | 22,074          | 22,202          | 258,893          |
| Provision for Loss          | 14,370         | 14,688         | 14,849         | 15,091          | 15,337          | 15,584          | 15,834          | 16,087          | 16,342          | 16,600          | 16,860          | 17,122          | 188,683          |
| Goodwill Amortization       | 3,056          | 3,056          | 3,056          | 3,056           | 3,056           | 3,056           | 3,056           | 3,056           | 3,056           | 3,056           | 3,056           | 3,056           | 36,667           |
| Depreciation                | 3,600          | 3,600          | 3,600          | 3,600           | 3,600           | 3,600           | 3,600           | 3,600           | 3,600           | 3,600           | 3,600           | 3,600           | 43,200           |
| Advertising                 | 2,875          | 2,891          | 2,908          | 2,925           | 2,942           | 2,959           | 2,977           | 2,994           | 3,011           | 3,029           | 3,047           | 3,064           | 35,623           |
| Auto Travel & Entertainment | 1,958          | 1,978          | 1,981          | 1,993           | 2,004           | 2,016           | 2,028           | 2,039           | 2,051           | 2,063           | 2,075           | 2,087           | 24,266           |
| Professional Fees           | 3,700          | 3,700          | 3,700          | 3,700           | 3,700           | 3,700           | 3,700           | 3,700           | 3,700           | 3,700           | 3,700           | 3,700           | 44,400           |
| Office Supplies             | 1,150          | 1,157          | 1,163          | 1,170           | 1,177           | 1,184           | 1,191           | 1,198           | 1,205           | 1,212           | 1,219           | 1,226           | 14,249           |
| Payroll Taxes               | 2,499          | 2,514          | 2,528          | 2,543           | 2,558           | 2,573           | 2,588           | 2,603           | 2,618           | 2,633           | 2,649           | 2,664           | 30,971           |
| Data Processing             | 1,840          | 1,850          | 1,861          | 1,872           | 1,883           | 1,894           | 1,905           | 1,916           | 1,927           | 1,939           | 1,950           | 1,961           | 22,799           |
| ILBC Assessments            | 3,300          | 3,300          | 3,300          | 3,300           | 3,300           | 3,300           | 3,300           | 3,300           | 3,300           | 3,300           | 3,300           | 3,300           | 39,600           |
| Conventions                 | 150            | 150            | 150            | 150             | 150             | 150             | 150             | 150             | 150             | 150             | 150             | 150             | 1,800            |
| Telephone                   | 1,725          | 1,735          | 1,745          | 1,755           | 1,765           | 1,776           | 1,786           | 1,796           | 1,807           | 1,817           | 1,828           | 1,839           | 21,374           |
| Insurance-Health            | 2,016          | 2,027          | 2,039          | 2,051           | 2,063           | 2,075           | 2,087           | 2,099           | 2,112           | 2,124           | 2,136           | 2,149           | 24,975           |
| Interest on Notes Payable   | 5,842          | 4,950          | 4,858          | 4,767           | 4,675           | 4,583           | 4,492           | 4,400           | 4,308           | 4,217           | 4,125           | 4,033           | 54,450           |
| Other                       | 637            | 641            | 644            | 648             | 652             | 656             | 660             | 663             | 667             | 671             | 675             | 679             | 7,894            |
| Memberships                 | 250            | 250            | 250            | 250             | 250             | 250             | 250             | 250             | 250             | 250             | 250             | 250             | 3,000            |
| Property Tax                | 575            | 578            | 582            | 585             | 588             | 592             | 595             | 599             | 602             | 606             | 609             | 613             | 7,125            |
| Land Lease                  | 1,500          | 1,500          | 1,500          | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 1,500           | 18,000           |
| Janitorial                  | 282            | 283            | 285            | 287             | 288             | 290             | 292             | 293             | 295             | 297             | 299             | 300             | 3,491            |
| Employee Benefits           | 1,000          | 1,000          | 1,000          | 1,000           | 1,000           | 1,000           | 1,000           | 1,000           | 1,000           | 1,000           | 1,000           | 1,000           | 12,000           |
| Postage                     | 552            | 555            | 558            | 562             | 565             | 568             | 572             | 575             | 578             | 582             | 585             | 588             | 6,840            |
| Repair & Maintenance        | 1,380          | 1,388          | 1,396          | 1,404           | 1,412           | 1,420           | 1,429           | 1,437           | 1,445           | 1,454           | 1,462           | 1,471           | 17,099           |
| Rent                        | 853            | 853            | 853            | 853             | 853             | 853             | 853             | 853             | 853             | 853             | 853             | 853             | 10,236           |
| Taxes & Licenses            | 230            | 231            | 233            | 234             | 235             | 237             | 238             | 240             | 241             | 242             | 244             | 245             | 2,850            |
| Dues & Subscriptions        | 324            | 326            | 328            | 330             | 332             | 334             | 336             | 338             | 340             | 342             | 344             | 346             | 4,018            |
| Utilities                   | 805            | 810            | 814            | 819             | 824             | 829             | 833             | 838             | 843             | 848             | 853             | 858             | 9,974            |
| Legal & Accounting          | 2,000          | 2,000          | 2,000          | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 2,000           | 24,000           |
| ORE Expense                 | 1,541          | 1,541          | 1,541          | 1,541           | 1,541           | 1,541           | 1,541           | 1,541           | 1,541           | 1,541           | 1,541           | 1,541           | 18,496           |
| Board and Chairman Fees     | 500            | 500            | 500            | 500             | 500             | 500             | 500             | 500             | 500             | 500             | 500             | 500             | 6,000            |
| <b>TOTAL EXPENSE</b>        | <b>283,700</b> | <b>205,995</b> | <b>208,293</b> | <b>210,595</b>  | <b>212,901</b>  | <b>215,211</b>  | <b>217,524</b>  | <b>219,841</b>  | <b>222,162</b>  | <b>224,487</b>  | <b>226,816</b>  | <b>229,149</b>  | <b>2,596,676</b> |
| <b>NET INCOME</b>           | <b>\$4,582</b> | <b>\$6,407</b> | <b>\$8,257</b> | <b>\$10,131</b> | <b>\$12,030</b> | <b>\$13,954</b> | <b>\$15,903</b> | <b>\$17,878</b> | <b>\$19,879</b> | <b>\$21,907</b> | <b>\$23,962</b> | <b>\$26,043</b> | <b>\$180,934</b> |

See accompanying "Summary of Significant Projection Assumptions" and Compilation Report

Tab 4



## AGREEMENT

This Agreement is made and entered into this 26 day of December, 1984, by and between Larry R. Hendricks and Kent L. Brown ("Acquirors"), and the Industrial Loan Guaranty Corporation of Utah, a non-profit Utah corporation ("ILGC"):

In consideration of the premises and agreements herein contained, it is agreed by and between the parties hereto as follows:

1. Closing. A meeting of the parties to this Agreement (the "Closing") will take place at which the certificate, note and other documents required by this Agreement will be delivered or exchanged. An agreement between the Acquirors and the Department of Financial Institutions of the State of Utah will also be executed at that time and a copy of that agreement is attached hereto and made a part hereof. The Closing will take place at the office of the Utah State Department of Financial Institutions. The Closing may take place at such other place, and at such time or date as may be agreed upon by the Acquirors and the ILGC.

2. Asumption of Thrift and Net Worth Certificates. In consideration for an agreement on the part of Acquirors to infuse monies into Heritage as provided in paragraph 4 hereof to enable Heritage to pay all outstanding obligations of Western Heritage Thrift & Loan ("Heritage") to

the holders of thrift certificates of deposit and thrift savings accounts ("Deposits") issued by Heritage, at the Closing the ILGC will (1) purchase a net worth certificate issued by Heritage in the sum of \$1,000,000; (2) purchase a second net worth certificate issued by Heritage in the sum of \$250,000 upon receipt by Heritage of the \$150,000 infusion described in paragraph 4 below; (3) purchase a third net worth certificate issued by Heritage in the sum of \$250,000 6 months from the date of the \$150,000 infusion described in paragraph 4 below if Heritage's improvement in net worth at that time is reasonably close to the projections contained in the pro forma projections furnished to the Department of Financial Institutions; and (4) purchase a fourth net worth certificate issued by Heritage in the sum of \$500,000 on or before January 1, 1986 if Heritage's improvement in net worth at that time is reasonably close to the projections contained in the pro forma projections furnished to the Department of Financial Institutions. The series of certificates described will mature at the rate of \$250,000 per year commencing ten years from the date of issuance of the first certificate. Consideration for the certificates will be promissory notes from the ILGC with maturity dates and payment terms corresponding to those of the net worth certificates. It is intended that at all times and under all circumstances the net worth certificates and the promissory notes given as consideration

therefor will offset each other. The note of the ILGC given as consideration for the net worth certificate and the certificate shall be in the forms annexed hereto as Exhibit "A" and "B" respectively.

3. ILGC Bad Debt Assumption. As additional consideration for the assumption of the deposit liabilities of Heritage by the Acquirors, the ILGC hereby agrees to reimburse up to \$200,000 of bad debt losses of Heritage over and above \$750,000 bad debt losses on existing loans. It is understood that there is presently a reserve by Heritage for bad debt losses of \$550,000. The Acquirors shall have Heritage assume as part of their infusion of capital up to \$750,000 of bad debt losses on existing loans. If there is more than \$750,000 loss from existing loans, the ILGC shall assume and agrees to compensate Heritage for any bad debt losses on existing loans above \$750,000 and to \$950,000. Heritage will absorb the losses above \$950,000. Bad debt losses shall mean principal and finance charges on loans and attorney's fees or other costs of collection paid by Heritage. The amount of the bad debt loss reimbursement payable hereunder will be due and payable on August 1, 1987. In the meantime, however, Heritage shall be permitted to forego payment of its regular annual assessments to the ILGC and the amounts not paid will be offset against any amount due from the ILGC in August 1, 1987. In the event that the losses that the ILGC is required to reimburse

hereunder do not total the amount of the assessments which have been withheld by Heritage, the difference will be paid to the ILGC by Heritage on August 1, 1987.

4. Infusion of Capital. As additional consideration Acquirors agree to infuse \$400,000 cash as capital of Heritage at the time of closing and infuse an additional \$150,000 in cash or other assets approved by the Department within 90 days thereafter.

5. Stock Transfer. The ILGC operates under the supervision of the Commissioner of Financial Institutions of the State of Utah, and the commitments of the ILGC hereunder are specifically conditional upon the entry of a formal order by the Commissioner transferring the stock of Heritage to the Acquirors and reciting that the terms of the participation of the ILGC in the transaction have been reviewed and that they are not disapproved.

6. Monthly Reporting and Oversight. Heritage agrees to submit monthly balance sheets and income statements to the Department of Financial Institutions and the ILGC until August of 1987 so that its progress in meeting its goals can be monitored. And during that same period, the Department of Financial Institutions and the ILGC shall have the right to review on a monthly or other periodic basis new loans, leases and other investments made by Heritage. The ILGC shall have the right to review and disapprove on 30 days' notice any bad debt losses before they are charged off.

7. Restriction on Stock. The Acquirors covenant

that they will not encumber or transfer all or any part of their stock in Heritage until January of 1986 without the express written approval of the Department of Financial Institutions and the ILGC.

8. Entire Agreement and Utah Law. This Agreement and the agreements and transactions provided for herein (a) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, and (b) shall be governed in all respects, including validity, interpretation and effect by the laws of the State of Utah.

9. Subject to Department Agreement. This Agreement is subject to the execution of suitable agreements between the Acquirors and the Department of Financial Institutions of the State of Utah. In the event that such agreements are not reached and this Agreement closed by December 31, 1984, then this Agreement shall be void.

10. ILGC Resolution and Opinion. At the Closing, the ILGC shall deliver to Acquirors a certified copy of a resolution of the Board of Trustees of the ILGC authorizing this transaction and a legal opinion of its counsel to the effect that the ILGC has the authority to participate in this transaction in accordance with the terms hereof under applicable statutes and its articles of incorporation or bylaws. Such resolution and opinion shall be appended to this Agreement as Exhibit "C".

IN WITNESS WHEREOF, the parties have duly executed  
this Agreement in Utah as of the date first above written.

ACQUIRORS:

Larry R. Hendricks  
Larry R. Hendricks

Kent L. Brown  
Kent Brown

INDUSTRIAL LOAN GUARANTY CORPORATION  
OF UTAH

By: Robert B. Geastead

Its: President

EXHIBIT "A"

NET WORTH CERTIFICATE - 1984

December , 1984

FOR VALUE RECEIVED, a Utah corporation ("Issuer") promises to pay to the Industrial Loan Guaranty Corporation of Utah, a non-profit Utah corporation, the total principal sum of Dollars (\$ ), together with interest on the unpaid balance thereof at the rate of ten percent (10%) per annum, accruing from and after the date hereof, payable as follows:

Interest shall be paid quarterly on the first day of each April, July, October and January hereafter. Principal shall be paid in annual installments of \$ each, the first such installment being due and payable and a like installment being due and payable on of each succeeding calendar year until , at which time all remaining principal and accrued interest hereunder shall be paid in full.

All payments hereunder shall be paid to the Holder in whose name the Net Worth Certificate is at the close of business on the last preceding business day.

This Net Worth Certificate is issued upon authorization of Issuer's Board of Directors, and upon authority of the Commissioner of Financial Institutions of the State of Utah ("Commissioner") and pursuant to the Commissioner's Regulation ILR:009.2;

this Net Worth Certificate is also issued in accordance with an Agreement dated as of \_\_\_\_\_, 1984, between Issuer and the Purchaser hereof.

The following is a statement of the rights of the Holder of this Net Worth Certificate and of the conditions to which it is subject, to which the Holder of this Net Worth Certificate hereby agrees:

(a) This Net Worth Certificate shall have a priority over any claim arising out of an equity interest in the Issuer in the event of a liquidation or reorganization, and over any right of equity holders to participate in future earnings of the Issuer. This Net Worth Certificate shall be subordinate to the claims of all account holders of the Issuer, certificates of deposit of the Issuer, contract debt obligations and to the claims of general creditors outstanding on the date of sale of this Certificate;

(b) This Net Worth Certificate is the obligation of the Issuer only, and no recourse shall be had for the payment thereof or the interest thereon against any shareholder, officer, director or affiliated corporation of the Issuer, either directly or through the Issuer, by virtue of any statute for the enforcement of any assessment or otherwise, all such liability of shareholders, directors, officers and affiliates, as such, being released by the Holder hereof by the acceptance of this Net Worth Certificate; and

(c) This Certificate has been issued in exchange for a Promissory Note (hereinafter the "Promissory Note") of even date herewith, in the original principal amount of



ollars (§ ), executed by Holder in favor of Issuer. In the event that the Holder becomes subject to any voluntary or involuntary petition under any of the chapters of the Bankruptcy Code (Title 11, United States Code) or pursuant to a petition or other proceedings under any other state or federal law pertaining to insolvency, receivership, reorganization or assignment for the benefit of creditors, then the Issuer may, in lieu of paying in cash any amounts due hereunder, offset said amounts against the amounts then due and payable to Issuer pursuant to the Promissory Note. This right of set-off shall remain in effect regardless of any transfer or assignment of this Certificate to a party other than the Industrial Loan Guaranty Corporation of Utah.

(d) Should there be any default by the Issuer in the payment of any amounts owed pursuant to this Net Worth Certificate; or, should the note received as consideration for this Net Worth Certificate be sold or assigned by to another person; or should there be a sale, merger or consolidation of or a change in its control then, and in such event, the entire indebtedness evidenced hereby shall, at the option of Holder and without notice to Issuer, at once become due and payable and may be collected forthwith, regardless of the stipulated date of maturity hereof.

IN WITNESS WHEREOF, has caused its corporate name to be hereto subscribed by its President and attested by its Secretary, and its corporate seal to be hereto affixed on the day of December, 1964.

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

\_\_\_\_\_  
Its Secretary

Approved:

The Department of Financial  
Institutions of the State of Utah

By \_\_\_\_\_  
Elaine B. Weis, Commissioner

EXHIBIT "B"

PROMISSORY NOTE

§

December , 1984

FOR VALUE RECEIVED, the undersigned ("Maker") promises to pay to , a Utah corporation, (hereinafter sometimes referred to as "Holder") in lawful money of the United States of America, the total principal sum of Dollars (\$ ), together with interest on the unpaid balance thereof at the rate of ten percent (10%) per annum, accruing from and after the date hereof, payable as follows:

Interest shall be paid quarterly on the first day of each April, July, October and January hereafter. Principal shall be paid in annual installments of \$ each, the first such installment being due and payable on ., and a like installment being due and payable on of each succeeding calendar year until , at which time all remaining principal and accrued interest hereunder shall be paid in full.

Maker agrees to pay all reasonable attorneys' fees and other expenses incurred by in the enforcement of any of its rights hereunder whether the default is ultimately cured or whether is obligated to pursue its legal remedies, including such expenses incurred prior to the institution of legal action, during the

pendency of such legal action and continuing to include all such expenses incurred in connection with any appeal to higher courts arising out of legal proceedings to enforce Maker's obligations hereunder.

This Note is given in purchase of a

Dollar (\$) Net Worth Certificate of

dated , and issued to the Maker.

In the event that becomes subject to any voluntary or involuntary petition under any of the chapters of the Bankruptcy Code (Title 11, United States Code) or to a petition or other proceeding under any other state or federal law pertaining to insolvency, receivership, reorganization or assignment for the benefit of creditors, then Maker may, in lieu of paying in cash any amounts due hereunder, offset said amounts against the amounts then due and payable to Maker pursuant to said Net Worth Certificate. This right of set-off shall remain in effect regardless of any transfer or assignment of this Note to a party other than

All payments hereunder shall be applied first to accrued interest, then to principal. This Note may be prepaid at any time without penalty.

It is hereby expressly agreed that should there be any default by Maker in the payment of any amounts owed pursuant to this Note, then, and in such event, the entire indebtedness evidenced hereby shall, at the option of Holder and without notice to Maker, at once become due and payable and may be collected forthwith, regardless of the stipulated date of maturity.

Maker hereby waives presentment for payment, demand, protest, notice of dishonor and nonpayment of this Note and consents to any and all extensions of time, renewals, waivers or modifications that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any security, or any part thereof, with or without substitution.

This Note shall be governed by the laws of the State of Utah. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof. Time is of the essence of this Note.

This Note may not be assigned or transferred to anyone other than

This Note is the obligation of the Maker only, and no recourse shall be had for the payment thereof or the interest thereon against any member, officer or trustee of the Maker, except for assessments which may be made against a member of the Maker, pursuant to Title 7 of the Utah Code Annotated.

DATED at Salt Lake City, Utah this            day of December, 1984.

INDUSTRIAL LOAN GUARANTY  
CORPORATION OF UTAH, a  
nonprofit Utah corporation

By \_\_\_\_\_

0454

1001232

CERTIFICATE

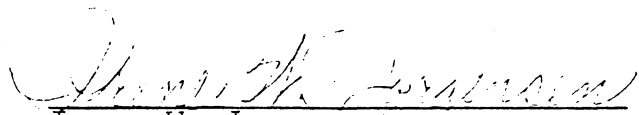
The undersigned duly elected and acting Assistant Secretary of the Industrial Loan Guaranty Corporation hereby certifies that the following is a true and correct copy of a resolution which was unanimously approved by the Executive Committee of the Board of Trustees at a meeting participated in by a quorum on December 19, 1984:

Resolved, that, upon approval of the transaction by the Commissioner of Financial Institutions of the State of Utah, the appropriate officers of the corporation be, and they hereby are, authorized to execute and deliver such documents as may be necessary in connection with a transaction in which Larry Hendricks and Kent L. Brown are acquiring control of Western Heritage Thrift and Loan and in which the Industrial Loan Guaranty Corporation of Utah will provide the following kinds of support:

1. Purchase of up to \$2 million of net worth certificates at various times over the period of approximately a year, with the amount to be dependent upon the infusion of additional capital by the buyers and the performance of the company. The net worth certificates will be effective for ten years and mature thereafter over a period of eight years

2. Reimburse Western Heritage up to \$200,000 for credit losses in excess of \$750,000 sustained on assets existing at the time of the transaction.

DATED this 20th day of December, 1984.

  
Irene W. Jorgensen  
Assistant Secretary

[Corporate Seal]

LAW OFFICES  
WATKISS & CAMPBELL

A PROFESSIONAL CORPORATION

TWELFTH FLOOR

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SALT LAKE CITY, UTAH 84101

TELEPHONE  
(801) 363-3300

CABLE: WATCAM

OF COUNSEL  
ZAR E. HAYES  
RICHARD B. FERRARI

|                         |                        |
|-------------------------|------------------------|
| DAVID K. WATKISS        | KAREN C. JENSEN        |
| ROBERT S. CAMPBELL, JR. | ELIZABETH T. DUNNING   |
| JAMES P. COWLEY         | VERNON L. HOPKINSON    |
| HERSCHEL J. SAPERSTEIN  | D. RANDALL TRUEBLOOD   |
| H. WAYNE WADSWORTH      | VINCENT C. RAMPTON     |
| WILLIAM VOGEL           | CORY H. MAXWELL        |
| PHILIP C. PUGSLEY       | JOSEPH T. DUNBECK, JR. |
| GLEN E. DAVIES          | ANNETTE W. JARVIS      |
| ROBERT D. MAACK         | THOMAS P. MELLOY       |
| MICHAEL F. HEYREND      | TRACY H. FOWLER        |
| MICHAEL D. ZIMMERMAN    | R. L. KNUTH            |
| GREGORY B. MONSON       | MOLLY B. KENNY         |
| ALLAN T. BRINKERHOFF    | DENNIS J. CONROY       |
| WESTON L. HARRIS        | STEVEN C. MAGLEBY      |
| E. BARNEY GESAS         | LOUISE T. KNAUER       |
| LANGDON T. OWEN, JR.    | STEVEN T. WATERMAN     |
| DAVID B. WATKISS        | KEN P. JONES           |

December 20, 1984

Larry R. Hendricks, CPA  
285 West North Temple, Suite 202  
Salt Lake City, Utah 84103

Dear Mr. Hendricks:

A legal opinion of this firm as counsel for the Industrial Loan Guaranty Corporation (hereafter "ILGC") has been requested in connection with the transaction in which you and Kent L. Brown will acquire control of Western Heritage Thrift and Loan, with certain assistance to be provided by the ILGC. The Agreement entered into with the ILGC requires that the ILGC obtain from its counsel an opinion with respect to its authority to participate in the transaction in accordance with the Agreement.

In rendering the following opinion, this firm has analyzed and considered the applicable statutes and the Articles of Incorporation and Bylaws of the ILGC, the Agreement referred to above, and the supporting resolution of the Executive Committee of the Board of Trustees of the ILGC.

It is the opinion of the undersigned that the ILGC has the authority to purchase Net Worth Certificates and provide a \$200,000 credit loss reimbursement as provided for in the Agreement.

The opinion set forth above is based upon our best judgment and has been arrived at after considering the law and pertinent facts. Obviously we cannot and do not warrant our conclusions and we cannot and do not assure you that a court or other judicial or administrative entity will agree with our conclusions or will arrive at the same conclusions.

No opinion is expressed with respect to whether there are or will in the future be sufficient assets to enable the ILGC to perform the obligations incurred in connection with this transaction or other transactions past, present or future.



WATKISS & CAMPBELL

Larry R. Hendricks, CPA

December 20, 1984

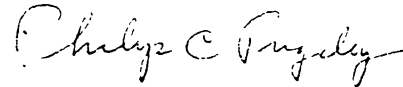
Page Two

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If you have questions about anything contained herein or wish to discuss these matters further, we will be pleased to hear from you.

Very truly yours,

WATKISS & CAMPBELL

A handwritten signature in cursive script that reads "Philip C. Pugsley". The signature is written in dark ink and is positioned above the printed name.

Philip C. Pugsley

PCP:fjk

Tab 5

APR 23 1987

H. Dixon Hadley, Clerk, 3rd Dist. Court  
By R. G. Grotz  
Deputy Clerk

DAVID L. WILKINSON (#3472)  
Attorney General  
STEPHEN G. SCHWENDIMAN (#2891)  
Chief, Assistant Attorney General  
BRYCE H. PETTEY (#2593)  
Assistant Attorney General  
Tax & Business Regulation Div.  
Attorneys for Elaine B. Weis,  
Commissioner of Financial  
Institutions in Possession of  
Western Heritage Thrift and Loan  
130 State Capitol Building  
Salt Lake City, Utah 84114  
Telephone: (801) 533-5319

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

IN THE MATTER OF THE : FINDINGS OF FACT, CONCLUSIONS  
POSSESSION BY COMMISSIONER OF : OF LAW, AND ORDER APPROVING  
FINANCIAL INSTITUTIONS OF : PLAN OF LIQUIDATION  
WESTERN HERITAGE THRIFT AND LOAN: Civil No. C86-7253  
: Judge Richard H. Moffat

---

The "Motion for Order Approving Plan of Reorganization and Liquidation" of Elaine B. Weis, Commissioner of Financial Institutions ("Commissioner"), in possession of Western Heritage Thrift and Loan ("Western Heritage"), was called for hearing at the appointed time and place of 10:00 a.m. on Thursday, April 2, 1987, before the Honorable Richard H. Moffat, District Judge. The Commissioner in possession of Western Heritage was represented by Bryce H. Pettey, Assistant Attorney General. Also entering appearances were: Lowell V. Summerhays, Esq., representing a

group of depositors in Western Heritage; Philip C. Pugsley, Esq., WATKISS & CAMPBELL, representing the Commissioner in possession of the Industrial Loan Guaranty Corporation ("ILGC"); Carl J. Nemelka, Esq., representing himself and certain taxpayers objecting to the use of any State funds in the proposed plan of liquidation; and Michael J. Wilkins, Esq., LARSEN & WILKINS, representing Kent L. Brown, an owner of Western Heritage, and also representing a group of depositors in Western Heritage. Numerous depositors of Western Heritage were also present in the courtroom.

Also heard at the same time were the Commissioner's motions for orders approving plans of liquidation (similar to the plan of liquidation proposed for Western Heritage) for Charter Thrift and Loan and for Western Heritage Thrift and Loan. Various counsel entered appearances for persons interested in those proceedings, and numerous depositors from those institutions were also present.

The Court took oral testimony from Commissioner Weis and received into evidence certain exhibits introduced during the Commissioner's testimony. The Commissioner also offered certain minor amendments to the proposed plan of liquidation. The Court also considered written objections filed with the Court prior to the hearing, and received comments from those present who wished to address the Court on matters relevant to the hearing.

Prior to presenting evidence in support of the proposed plan of liquidation, counsel for the Commissioner stipulated to the Court that the State would not assert approval of the pro-

posed plan of liquidation by the Court as a defense to bar any claims against the State, its agencies, departments, officers or employees, by any depositors, creditors, or other who might have claims against the State for losses suffered due to the insolvency of Western Heritage.

The Court having considered the testimony of the Commissioner, the exhibits entered into evidence, the pleadings, and the representations made at the hearing, and considering itself well-advised in the premises, it now enters the following:

#### FINDINGS OF FACT

1. Elaine B. Weis, Commissioner of Financial Institutions, took possession of Western Heritage on September 22, 1986, with this Court entering an Order to that effect on the same date.

2. Deposits in Western Heritage were guaranteed by the ILGC pursuant to Chapter 8a of Title 7, Utah Code Ann.

3. On July 31, 1986, pursuant to an Order entered by this Court on that same date, the Commissioner took possession of the ILGC in proceedings styled In re the possession of the Industrial Loan Guaranty Corporation of Utah by the Commissioner of Financial Institutions of the State of Utah, Civ. No. C86-5924 (Third Judicial District Court for the County of Salt Lake, State of Utah).

4. Upon taking possession of the ILGC, the Commissioner issued an order, with the approval of the Governor and pursuant to Utah Code Ann. § 7-2-19(1) (1982), prohibiting Western Heritage from making payments to any creditors, including

payments to any depositors, except for those with regular savings accounts, who could make limited withdrawals of minimal amounts or for medical or educational emergencies. The order was renewed at the end of September, 1986, to permit those with certificates of deposit to convert their deposits to regular savings accounts and thus make the limited withdrawals. The Order was renewed at the end of November, 1986, but the authorization to make withdrawals was withdrawn in mid-January 1987. The Order suspending payments to creditors, without any provision for withdrawals by depositors, was renewed at the end of January 1987 and at the end of March 1987.

5. Since taking possession of the ILGC, the Commissioner has taken possession of four (4) additional thrift and loan institutions under the jurisdiction of this same Court: Commerce Financial (In the Matter of the Possession by the Commissioner of Financial Institutions of Commerce Financial, Civ. No. C87-0056); Charter Thrift & Loan ("Charter") (In the Matter of the Possession by the Commissioner of Financial Institutions of Charter Thrift and Loan, Civ. No. C87-0057); Interlake Thrift ("Interlake") (In the Matter of the Possession by the Commissioner of Financial Institutions of USA Financial dba Interlake Thrift, Civ. No. C86-6610); and Western Heritage Thrift & Loan ("Western Heritage") (In the Matter of the Possession by the Commissioner of Financial Institutions of Copper State Thrift and Loan, Civ. No. C87-0058).

6. Since taking possession of the ILGC, the Commissioner has attempted to find someone to buy or merge with

Western Heritage, or buy its assets at a price that would be more beneficial to the depositors than liquidation. The Commissioner has at times considered merging Western Heritage with four other thrift and loan institutions in her possession to create one thrift with insurance of deposits from the Federal Deposit Insurance Corporation ("F.D.I.C."), having the five merged thrifts taken over by Williamsburg Savings Bank, and having the five merged thrifts become Olympus State Bank. For various reasons, none of these plans or any others the Commissioner may have considered have proved feasible.

7. The Commissioner has concluded that liquidation of Western Heritage is the only now available option for Western Heritage.

8. The Governor created a committee composed of depositors in the five (5) thrift and loan institutions in the Commissioner's possession and prominent individuals with various professional backgrounds. This committee listened to and studied various proposals regarding all five (5) institutions, and then issued a report in which they unanimously recommended that Western Heritage be liquidated as soon as possible.

9. A "Notice of Need to File Claims" required by Utah Code Ann. § 7-2-6(2) (Supp. 1986) was printed in The Salt Lake Tribune and the Deseret News on April 19, 1987, for Charter, Copper State, Commerce Financial, Interlake, and Western Heritage. As a result, the total amount of the claims against each of these thrift and loan institutions will be known by October 19, 1987.

10. Utah Code Ann. § 7-2-16 (1982) prohibits payment of any "interim ratable dividends" from the assets of Western Heritage until after the expiration of the date set for the presentation of claims, but that statute was passed when Utah Code Ann. § 7-2-15 (1982) prohibited any preference on payment of claims except necessary and proper costs of administration. Utah Code Ann. § 7-2-15 (1982) has been amended, and now provides for nine classes of claims and sets the priorities for each. The first four classes in order of priorities are (a) secured creditors, (b) administrative costs, (c) unsecured claims for wages not exceeding \$2,000 for each individual, and (d) claims of depositors. (Utah Code Ann. § 7-2-15 (S.B. No. 167, 1987 Gen. Sess.).)

11. The Commissioner's "Motion for Order Approving Plan of Reorganization and Liquidation" contains a proposed a plan of liquidation for Western Heritage ("the Plan"). A copy of the motion containing the Plan, and a notice of hearing on the motion, was sent to all depositors and creditors of record as ordered previously by this Court.

12. Under the Plan:

a. A liquidator will be appointed by the Commissioner within sixty (60) days of the approval of the plan of liquidation by this Court. Actions of the Liquidator will be subject to review by the Commissioner and by this Court. The liquidator will proceed to liquidate the assets of Western Heritage in an orderly manner. By amendment to the Plan offered during the Commissioner's testimony, cash distributions will be



made by the liquidator every six (6) months in April and October if the amount of cash on hand equals three per centum (3%) of the deposit liabilities, or upon further motion to this Court by the liquidator. By a further amendment offered during the Commissioner's testimony, if an account balance at any time is below fifty dollars (\$50.00), the liquidator will pay the entire balance of that account at the next distribution to eliminate burdensome and costly accounting for such small accounts, thereby reducing administrative costs.

b. An immediate cash distribution of the cash on hand in Western Heritage will be made to depositors of Western Heritage on a pro rata basis, based upon the ratio of the cash on July 31, 1986, plus the total amount of withdrawals since July 31, 1986, to the total of the deposits in Western Heritage on July 31, 1986. Any cash withdrawn by a depositor since July 31, 1986 will be offset against the amount of cash to which that depositor would otherwise be entitled under this first cash distribution. The amount of this first cash distribution, which is to be an "advance" against the "interim ratable dividends" permitted under Utah Code Ann. § 7-2-16 (1982), is expected to be approximately 9¢ per dollar of deposits, less any cash withdrawals since July 31, 1986. The Commissioner has determined that the estate of Western Heritage can make this "advance", which will alleviate some of the financial hardships that have been ~~caused by the liquidation of Western Heritage since the liquidation~~ prohibiting Western Heritage from paying any creditors or depositors became effective on July 31, 1986, and that the estate of

Western Heritage will still have sufficient assets on hand to pay claims of a higher priority under Utah Code Ann. § 7-2-15 (S.B. No. 167 (1987 Gen. Sess.)).

c. The liquidator may finance the sale of real estate owned by Western Heritage for up to five (5) years, but any real estate not sold by the liquidator within two (2) years after title comes into the possession of Western Heritage shall be auctioned off at the highest price.

d. Upon a determination of the total amount of the claims against the five (5) thrift and loan institutions in the Commissioner's possession, the Commissioner will be able to determine what portion of the ILGC's remaining funds should be paid to Western Heritage's depositors. A plan of distribution of the ILGC's funds will be presented at that time in the ILGC possessory proceedings, and, if approved by the Court in those proceedings, those ILGC funds approved for distribution to Western Heritage's depositors will then be distributed to Western Heritage's depositors.

e. The State of Utah has made available five million dollars (\$5,000,000.00) to assist the Commissioner in plans of liquidation or rehabilitation for thrift and loan institutions in the Commissioner's possession pursuant to S.B. No. 1, 4th Spec. Sess. (1986) ("the State funds"). The State funds can only be used in a plan of the Commissioner approved by the Governor and the Court. Under the Plan, a portion of the State funds would be reserved to pay administrative costs of the various plans of liquidation or rehabilitation, with the remainder of the funds

being used in each plan on a pro rata basis, based on the ratio of the total deposits of each institution on July 31, 1986, to the total deposits on July 31, 1986 of all thrift and loan institutions in the Commissioner's possession. That portion of the State funds allocable to Western Heritage will be paid on a pro rata basis to Western Heritage's depositors, based upon the account balance of a depositor on July 31, 1986 to the total deposits in Western Heritage on July 31, 1986, and, if assistance from the State funds is not necessary for any other thrift and loans besides the five (5) now in the Commissioner's possession, that distribution from the State funds is expected to be about 4.5¢ for each \$1.00 on deposit. It is expected that the plan of the Commissioner that will implement the placing of that portion of the State funds allocable to Western Heritage into Western Heritage will provide for the State to buy assets of Western Heritage, which assets will then belong to the State of Utah.

13. A group representing taxpayers of the State of Utah has moved to intervene in these proceedings for the purpose of raising a constitutional challenge to the use of a portion of the five million dollars (\$5,000,000.00) appropriated by the Utah State Legislature (S.B. No. 1, 4th Spec. Sess. (1986)) ("the State funds") in the plan of liquidation.

#### CONCLUSIONS OF LAW

1. The "advance" against the "interim ratable dividend" does not violate the provisions of Utah Code Ann. § 7-2-15 (1982).

2. Subject to the reservation in paragraph 3 below of these Conclusions of Law, in recommending the proposed plan of liquidation, as amended in open court, the Commissioner has not

acted arbitrarily, capriciously, fraudulently, or otherwise  
contrary to law, as must be shown pursuant to Utah Code Ann. § 7-  
2-2 (Supp. 1986) if this Court is to reject to proposed plan.

3. The objection by the group moving to intervene in  
these proceedings to that part of the plan of liquidation which  
envisions using a portion of the State funds does raise a ques-  
tion as to whether the use of those funds would be "otherwise  
contrary to law".

ORDER

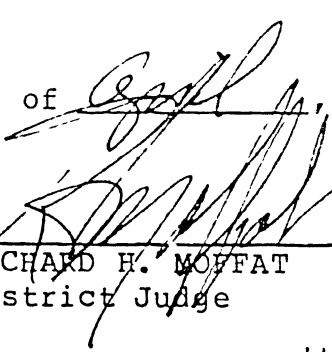
1. The plan of liquidation, as amended in open court,  
is approved, subject to the provisions in paragraph 2 below of  
this Order.

2. The Court reserves ruling on the approval of the  
use of the State funds until after a hearing is held on the  
motion of the taxpayers to intervene and possible subsequent  
hearing on the constitutional challenge.

3. The Court notes and reserves ruling on the claim of  
Mr. Brown as to his rights in the license of Western Heritage.

4. The Court reserves ruling on the claim of Mr.  
Wilkins as to his reservation of the right to brief the issue of  
whether Utah Code Ann. § 7-2-18(3) (S.B. No. 1, 4th Spec. Sess.  
(1986)), until the Court determines whether his claim should be  
brought in these proceedings.

DATED this 23<sup>rd</sup> day of April, 1987.

  
\_\_\_\_\_  
RICHARD H. MOFFAT  
District Judge

ATTEST  
H. DIXON HINDLEY  
CLERK  
By K. Grotz  
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 22<sup>nd</sup> day of April, 1987,  
a true and correct copy of the foregoing was mailed first class,  
postage prepaid to:

John B. Anderson, Esq.  
ANDERSON & HOLLAND  
623 East 100 South  
Salt Lake City, UT 84102

Ross C. Anderson, Esq.  
ANDERSON & ANDERSON  
50 South Main Street  
Salt Lake City, UT 84144

Anna W. Drake, Esq.  
NEILSON & SENIOR  
36 South State Street  
Salt Lake City, UT 84111

Carl J. Nemelka, Esq.  
75 North Center Street  
American Fork, UT 84003


Philip C. Pugsley, Esq.  
WATKISS & CAMPBELL  
310 South Main Street  
Salt Lake City, UT 84101

Clark W. Sessions, Esq.  
Dean C. Andreason, Esq.  
SESSIONS & MOORE  
505 East 200 South  
Salt Lake City, UT 84102

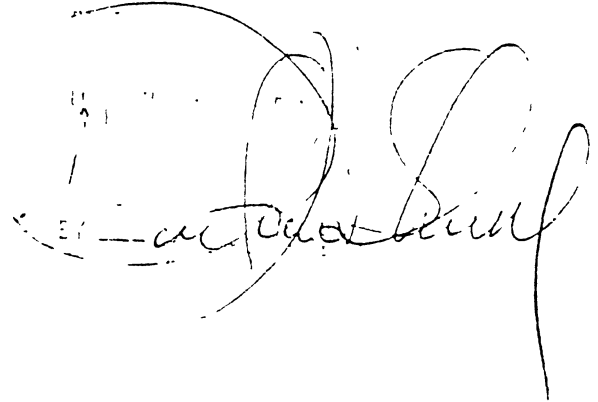
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LARSEN & WILKINS  
10 East South Temple, Suite 500  
Salt Lake City, UT 84133

James R. Soper, Esq.  
10 Broadway Building, Suite 400  
Salt Lake City, UT 84101

  
\_\_\_\_\_

David L. Wilkinson, No. 3472  
Attorney General  
Stephen G. Schwendiman, No. 2891  
Chief, Assistant Attorney General  
Bryce H. Pettey, No. 2593  
Assistant Attorney General  
Tax and Business Regulation Division  
Attorneys for George R. Sutton,  
Commissioner of Financial Institutions  
in Possession of Western Heritage Thrift  
and Loan Co.  
130 South Capital Building  
Salt Lake City, Utah 84114  
Telephone: (801) 533-5319



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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

In the Matter of the : Motion and Order Approving  
Possession by the Commissioner : Sale of the License of Western  
of Financial Institutions of : Heritage Thrift and Loan to  
Western Heritage Thrift : Conduct Business as an  
and Loan Co. : Industrial Loan Corporation  
: :  
: Civil No. C86-7253  
: :  
: Honorable Richard H. Moffat

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MOTION

The Commissioner, by and through his counsel of record, Bryce H. Pettey, Esq., hereby moves the above-entitled court, ex parte, pursuant to the provisions of Section 7-2-2, Utah Code Annotated, to approve the sale of the license of Western Heritage Thrift and Loan Co. to conduct business as an industrial loan corporation for the reasons and upon the terms and subject to the conditions set forth in the Findings,

Conclusions and Order approving purchase of the license of Western Heritage Thrift and Loan Co. to conduct business as an industrial loan corporation dated May 7, 1987, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

DATED this 8th day of May, 1987.



\_\_\_\_\_  
BRYCE A. PETTEY, ESQ.  
Attorney for George R. Sutton,  
Commissioner of Financial Institutions  
in Possession of  
Western Heritage Thrift and Loan Co.

ORDER

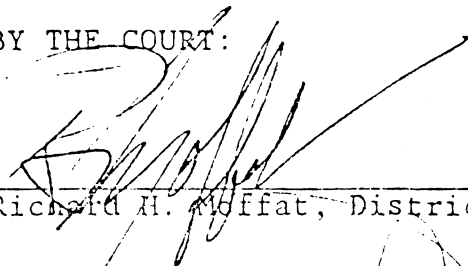
The Court having read the foregoing Motion, and on the basis of the Findings, Conclusions and Order approving the purchase of the license of Western Heritage Thrift and Loan Co. to conduct business as an industrial loan corporation dated May 7, 1987, signed by George R. Sutton, Commissioner of Financial Institutions.

IT IS HEREBY ORDERED that the Commissioner of Financial Institutions for the State of Utah is hereby authorized to sell the license of Western Heritage Thrift and Loan Co. to conduct business as an industrial loan corporation on the terms and subject to the conditions set forth in the Findings, Conclusions and Order dated May 7, 1987, a copy of

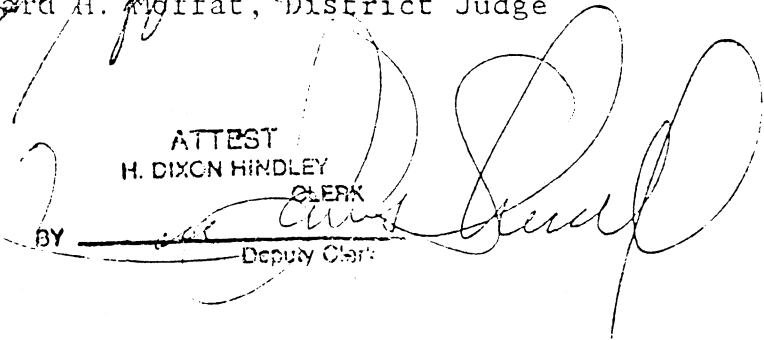
which is attached hereto, and said purchase and sale and the terms and conditions of said Findings, Conclusions and Order are hereby approved, confirmed and ratified.

DATED this 5 day of May, 1987.

BY THE COURT:

  
Richard H. Moffat, District Judge

ATTEST  
H. DIXON HINDLEY  
CLERK

BY   
Deputy Clerk



Tab 6

DETERMINATIVE STATUTES

I. Utah Code Ann. § 7-1-103: Definitions (19) "Insolvent" means the status of a financial institution which is unable to meet its obligations as they mature.

II. Utah Code Ann. § 7-1-305: Final Decisions on Applications for . . . Acquisition and Changes in Control of Financial Institutions:

(1) The commissioner shall make final decisions consistent with the purposes and provisions of this title on behalf of the department upon all applications to the department for approval of new institutions, branches, relocation, mergers or consolidation, acquisitions and changes in control of institutions subject to the jurisdiction of the department.

III. Utah Code Ann. § 7-1-703: Restrictions on Acquisition of Institutions . . . Authority of Commissioner:

(1) Unless the commissioner gives prior written approval under the provisions of Section 7-1-705, no person may:

(a) acquire, directly or indirectly, control of a depository institution or depository institution holding company subject to the jurisdiction of the department;

. . .  
(c) acquire all or substantially all of the assets of a depository institution or a depository institution holding company subject to the jurisdiction of the department;

(d) assume the deposit liabilities of a depository institution subject to the jurisdiction of the department.

. . .  
(g) acquire, directly or indirectly, the voting or nonvoting securities of a depository institution or a depository institution holding company subject to the jurisdiction of the department if the acquisition would result in the person obtaining more than 20% of the authorized voting securities of the institution if the nonvoting securities were converted into voting securities; . . .

IV. Utah Code Ann. § 7-1-705: Approval Required for Certain Transactions.

(1) No person may enter into any of the transactions described in Sections 7-1-702 and 7-1-703 or make any public offer to do so unless the person first complies with this section.

(2) An applicant . . . shall file with the Commissioner:

(a) an application in a form prescribed by the commissioner;

. . .

(3) The commissioner may disapprove any application filed under this section if he finds:

[(a) - (e) list of criteria] . . . .

V. Utah Code Ann. § 7-2-1: Supervisory actions by commissioner -- Grounds -- Mergers or acquisitions authorized by commissioner -- Possession of business and property taken by commissioner.

(1) An institution under the jurisdiction of the department shall be subject to supervisory actions by the commissioner under this chapter or Chapter 19 if the commissioner, with or without an administrative hearing, finds that:

\* \* \*

(c) an institution or other person is conducting its business in an unauthorized or unsafe manner, or is practicing deception upon its depositors, members, or the public, or is engaging in conduct injurious to its depositors, members or the public;

(d) an institution or other person has been notified by its primary account insurer of the insurer's intention to initiate proceedings to terminate such insurance or is otherwise not in a sound and safe condition to transact its business;

\* \* \*

(k) the remedies provided in section 7-1-307 [cease and desist orders], 7-1-308 [supervision or removal of director or officer], 7-1-309 [remedial action by unsound institution - assistance by insurers] are ineffective or impracticable to protect the interest of depositors, creditors, or members of the institution or other person, or to protect the interests of the public.

(2) If the commissioner finds that any of the conditions set forth in Subsections 7-2-1(1)(a) through (j) exist with respect to an institution under the jurisdiction of the department, and if the commissioner also finds that an order issued pursuant to § 7-1-307, 7-1-308, or 7-1-313 would not adequately protect the interest of the institution's depositors, creditors, members, or other interested persons from all dangers presented by the conditions found to exist, . . . he may;

\* \* \*

(b) take possession of the institution or other person subject to the jurisdiction of the department with or without a court order, if an acquisition of control of, a merger with, an acquisition of all or a portion of the assets of, or an assumption of all or a portion of the liabilities of the institution or other person without taking possession does not appear to him to be practicable. Upon taking possession, the commissioner is vested by operation of law with the title to and the right to possession of all assets the business, and property of the institution or other person subject to court order made under § 7-2-3. While in possession of an institution or other person, the commissioner, or any receiver or liquidator appointed by him, may exercise or all of the rights, powers, and authorities granted to the commissioner under the provisions of this chapter, or may give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liability of an institution or other person subject to the jurisdiction of the department, under the provisions of Chapter 19.

(3) No action of the commissioner under this section may be enjoined or set aside without a finding, after notice and hearing, that the action is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

VI. Utah Code Ann. § 7-2-2: Jurisdiction of district court -  
- Supervision of action of commissioner in possession -- Authority  
of commissioner and court.

\* \* \*

(2) Before taking possession of an institution or other person under his jurisdiction, or within a reasonable time after taking possession of an institution or other person without court order, as provided in this chapter, the commissioner shall cause to be commenced in the appropriate district court an action to provide the court supervisory jurisdiction to review the actions of the commissioner.

(3) The actions of the commissioner are subject to review of the court. The court has jurisdiction to hear all objections to the actions of the commissioner and may rule upon all motions and actions coming before it. Standing to seek review of any action of the commissioner or any receiver or liquidator appointed by him is limited to persons whose rights, claims, or interests in the institution would be adversely affected by the action.

(4) The authority of the commissioner under this chapter is of an administrative and not judicial receivership. The court may not overrule a determination or decision of the commissioner if it is not arbitrary, capricious, fraudulent, or contrary to law. If the court overrules an action of the commissioner, the matter shall be remanded to the commissioner for a new determination by him, and the new determination shall be subject to court review.

VII. Utah Code Ann. § 7-2-3: Action for injunction against commissioner in possession -- Procedure -- Appeal.

(1) Whenever any institution or other person considers itself aggrieved by the taking under Subsection 7-2-1(2)(b), it may within 10 days after the taking apply to the court to enjoin further proceedings, and the court, after citing the commissioner to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining the facts, may dismiss the application or, if the court finds the taking to be arbitrary, capricious, an abuse of discretion or otherwise contrary to law, enjoin the commissioner from further proceedings and direct him to surrender possession in such manner and upon such terms as the court may designate in the public interest.

(2) An appeal may be taken by the commissioner or by the institution from the judgment of the court as provided by law . . .

VIII. Utah Code Ann. § 7-8a-18(2): Notice of Possession by Commissioner -- Regulation and Examination of Operations by Commissioner . . .

(2) The operation of the guaranty corporation shall at all times be subject to the regulation of the commissioner and his duly designated representatives . . . .

IX. Utah Code Ann. § 7-19-1: Definitions.

(1) "Failing or failed depository institution" means a depository institution under the jurisdiction of the department:

(a) regarding which the commissioner makes a finding that any of the conditions set forth in Subsections 7-2-1(1)(a) through (j) exist;

(b) which meets the requirements of Subsection 7-2-1(1)(k);

(c) whose shareholders have consented to a supervisory action by the commissioner pursuant to Subsection 7-2-1(2);

(d) which is in the possession of the commissioner, or any receiver or liquidator appointed by him, pursuant to Chapter 2; or

(e) which, if a thrift institution, has its application for acceptance denied by a federal deposit insurance agency or the Federal Reserve, or receives notice from a federal deposit insurance agency or the Federal Reserve that denial of its application has been or will be recommended.

X. Utah Code Ann. § 7-20-1: Legislative findings and declarations.

(1) The Legislature finds and declares that:

(a) the economic well-being of the citizens and communities depends on the stability and reliability of the financial institutions in the state;

(b) Thrift institutions currently in the possession of the commissioner are inadequately capitalized to fully protect their depositors' funds.

(c) The industrial loan guaranty corporation is in the possession of the commissioner and is adequately funded to insure the deposits in member thrift institutions;

(d) The public trust in financial

institutions generally would be undermined if the commissioner were unable to maximize the return of depositors from funds in the thrift institutions in the possession of the commissioner; and

(e) Commerce in the state of Utah would be adversely affected by the insolvencies of individual depositors that may result from their inability to maximize the return of their deposits from the thrift institutions in the possession of the commissioner.

(2) It is, therefore, the purpose of this act is to facilitate the reorganization, liquidation, or disposition of the assets of the thrift institutions in possession of the commissioner in order to maximize the return of funds to depositors.

XI. Utah Code Ann. § 63-30-3: Immunity of governmental entity from suit. (1) Except as may be otherwise provided in this chapter, all governmental entities are immune from suit from any injury which results from the exercise of a governmental function . . .

XII. Utah Code Ann. § 63-30-5: Waiver of immunity as to contractual obligations. (1) Immunity from suit of all governmental entities is waived as to any contractual obligation . . .

XIII. Utah Code Ann. § 63-30-10: Waiver of immunity for injury caused by negligent act or omission of employee--Exceptions--Waiver for injury caused by violation of fourth amendment rights [Effective until July 1, 1990].

(1) Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury:

(a) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused; or

\* \* \*

(c) arises out of the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization; or

(d) arises out of a failure to make an inspection or by reason of making an inadequate or negligent inspection of any

property; or

\* \* \*

(f) arises out of a misrepresentation by the employee whether or not it is negligent or intentional; or . . .



Tab 7

DAVID L. WILKINSON #3472  
Attorney General  
STEPHEN G. SCHWENDIMAN #2891  
Chief, Assistant Attorney General  
BRYCE H. PETTEY #2593  
Assistant Attorney General  
Tax & Business Regulation Division  
Attorneys for Elaine B. Weis,  
Commissioner of Financial Institutions  
130 State Capitol Building  
Salt Lake City, Utah 84114  
Telephone: (801) 533-5319

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

|                                  |   |                                |
|----------------------------------|---|--------------------------------|
| IN THE MATTER OF THE POSSESSION  | : | NOTICE OF FILING OF PETITION   |
| BY THE COMMISSIONER OF FINANCIAL | : | AND OF NEED TO FILE OBJECTIONS |
| INSTITUTIONS OF WESTERN HERITAGE | : | THERE TO WITHIN TEN DAYS       |
| THRIFT AND LOAN COMPANY          | : |                                |
|                                  | : |                                |
|                                  | : | Civil No. <u>C86-7253</u>      |
|                                  | : |                                |
|                                  | : | Judge <u>Moffat</u>            |

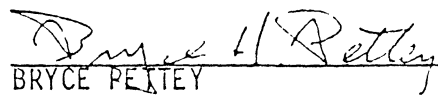
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TO ALL PARTIES OF RECORD:

Notice is hereby given that the Petition which is attached hereto has been filed with the Court. Any objection to approval of the Petition should be filed in writing with the Court and served upon Counsel for the Petitioner, Bryce Pettey, Assistant Attorney General, 130 State Capitol Building, Salt Lake City, Utah 84114, within ten days from the date hereof. If no such

objection is filed within said ten-day period, the matter will be presented to the Court for consideration without a hearing.

DATED this 23<sup>d</sup> day of September, 1986.

  
BRYCE PETTEY  
Counsel to the Commissioner of  
Financial Institutions  
State of Utah

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF FILING OF PETITION AND OF NEED TO FILE OBJECTIONS THERETO WITHIN TEN DAYS was served upon the following by hand delivering a true and correct copy on this ~~29th~~ day of ~~August~~ 1986.

23<sup>rd</sup> - LRH  
Lmp  
September  
LRH  
Lmp

Mr. Larry Hendricks, President  
Western Heritage Thrift & Loan Co.  
9383 South 700 East  
Sandy, Utah 84070

*Lynette Pool*

I hereby certify that on this 23<sup>rd</sup> day of September, 1986, I did receive a copy of the NOTICE OF FILING OF PETITION AND OF NEED TO FILE OBJECTIONS THERETO WITHIN TEN DAYS.

*Larry R. Hendricks, Pres.*  
LARRY HENDRICKS, President of  
Western Heritage Thrift and Loan Co.

Tab 8

BEFORE THE DEPARTMENT OF FINANCIAL INSTITUTIONS  
IN THE STATE OF UTAH

-----000000000-----

In Re: WESTERN HERITAGE THRIFT AND :  
LOAN COMPANY, a Utah Industrial :  
Loan Corporation, and A.I.D. : FINDINGS, CONCLUSIONS AND ORDER  
FINANCIAL CORPORATION, a/k/a :  
WESTERN HERITAGE CAPITAL CORPORATION, : CONFIDENTIAL  
a Utah Financial Institution Holding :  
Company :

-----000000000-----

FINDINGS

1. Western Heritage Thrift and Loan Company ("the Thrift") is an industrial loan corporation chartered by and subject to the jurisdiction of the Department of Financial Institutions of the State of Utah ("the Department"). The Thrift is a wholly-owned subsidiary of Western Heritage Capital Corporation ("the Holding Company") which was previously known as A.I.D. Financial Corporation, which is a financial institution holding company subject to the jurisdiction of the Department.

2. On or about May 16, 1984, the Department served upon the Thrift and the Holding Company a Notice of Adjudicative Proceedings. On June 15, 1984, the Department received an answer from the Thrift and Holding Company admitting that:

*Just 7 1/2% Capital*

a. The Thrift had not maintained adequate capital to comply with the requirements of Section 7-8-5(5) U.C.A. and Regulation ILR:012 for at least 90 days prior to the date of the answer.

b. The Thrift has outstanding loans or extensions of credit exceeding 10% of the Thrift's total capital, in violation of Section 7-8-5(1) U.C.A.

c. The Thrift is paying the Holding Company management fees of approximately \$7,000 per month in order for the Holding Company to pay its board fees, salaries, expenses relating to shareholder communications, legal fees and debt service. These payments from the Thrift are the Holding Company's only source of income. The fees were improper in view of the fact that the Thrift had never been profitable. The answer did not deny that there was no substantiation that management services were actually rendered by the Holding Company to the Thrift to justify these fees.

d. The Holding Company is insolvent, owing \$481,512 as of January 31, 1984, and having no source of income pay its debts other than anticipated future earnings from the Thrift and the sale of additional securities in the Holding Company.

e. The Holding Company issued approximately \$113,000 in debentures and promissory notes which are securities without an offering circular having been approved by the Department or supplied to the purchasers in violation of Section 7-1-503 U.C.A. and Department Regulation HR:CO3.

3. Since the aforementioned answer was filed, the condition of the Thrift has deteriorated substantially. The latest audit report delivered to the Department states that as of June 30, 1984, the Thrift's net worth had deteriorated to a negative \$107,570, rendering it insolvent. The report further showed that the Thrift operated at a loss of \$1,287,464 for the 1984 fiscal year as compared to an operating loss of \$287,631 for the prior fiscal year. The holding company is now delinquent in paying its debts with no foreseeable source of income. The plan to issue additional stock has apparently been abandoned.

4. The Thrift is currently conducting its business in an unauthorized and unsafe manner and is not in a sound and safe condition to continue operating in its present condition.

5. The remedies provided in Section 7-1-307, 7-1-308, or 7-1-313 would be ineffective to restore either the Thrift to a safe and sound condition in which to continue in business.

6. On November 5, 1984, notice was given to the Thrift and the Holding Company that because each had become or was about to become insolvent, the Commissioner of Financial Institutions intended to begin soliciting offers for merger or purchase from other parties and would divulge any information concerning the condition of the Thrift and the Holding Company as might be necessary to prepare a proposal for purchase or merger to submit to the Commissioner.

7. Since delivering the Notice described in the preceding paragraph, the Commissioner has sought merger or acquisition proposals from every party which she knew was interested or thought might be interested. To date, only one offer to acquire assets and liabilities of the Thrift and Holding Company has been received by the Department. This offer has been made by Larry R. Hendricks and Kent Brown ("the Acquirors"), and has been reduced to a separate written agreement with the Department. The Acquirors have also negotiated a separate agreement with the Industrial Loan Guaranty Corporation which has been reviewed and not disapproved by the Department.

8. By virtue of the cash infusions which would result from the acquisition by the Acquirors accepting their offer would benefit the depositors, creditors and owners of the Thrift and would not expose the ILGC to any additional substantial risk. As such, the aforementioned acquisition is a preferable option to closing and liquidating the Thrift at the present time.

#### CONCLUSIONS

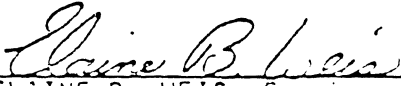
1. The Commissioner of Financial Institutions of the State of Utah has made findings with respect to the Thrift in accordance with Sections 7-2-1(1)(b), (c), (d), (e), (f), and (k) of the Utah Code Annotated (1953).

2. The Commissioner is empowered to authorize and require the Holding Company to convey to Larry R. Hendricks and Kent Brown all of the stock in Western Heritage Thrift and Loan Company pursuant to authority of Section 7-2-1(2)(a) U.C.A.

ORDER

By virtue of the foregoing Findings and Conclusions, the Commissioner of Financial Institutions of the State of Utah, pursuant to Section 7-2-1(2)(a), of the Utah Code Annotated, hereby authorizes and requires that all stock in Western Heritage Thrift and Loan Company held or claimed or titled in the name of Western Heritage Capital Corporation be conveyed to Larry R. Hendricks and Kent Brown, effective immediately.

DATED this 26<sup>th</sup> day of December, 1984

  
\_\_\_\_\_  
ELAINE B. WEIS, Commissioner  
Department of Financial Institutions  
State of Utah



Tab 9

13574

FILED

Linda Simpson

DAVID L. WILKINSON #3472  
Attorney General  
STEPHEN G. SCHWENDIMAN #2891  
Chief, Assistant Attorney General  
BRYCE H. PETTEY #2593  
Assistant Attorney General  
Tax & Business Regulation Division  
Attorneys for Elaine B. Weis,  
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130 State Capitol Building  
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Telephone: (801) 533-5319

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

IN THE MATTER OF THE POSSESSION  
BY THE COMMISSIONER OF FINANCIAL  
INSTITUTIONS OF WESTERN HERITAGE  
THRIFT AND LOAN CO.

PETITION FOR ORDER APPROVING  
POSSESSION OF WESTERN HERITAGE  
THRIFT AND LOAN CO.

Civil No. CF6-7253  
Judge [Signature]

Elaine B. Weis, Commissioner of Financial Institutions of the State of Utah, petitions the Court as follows:

1. Petitioner is the Commissioner of Financial Institutions of the State of Utah and has the duties, powers, rights and responsibilities as provided in Title 7, Utah Code Annotated (Repl. Vol. 1C 1982).

2. Western Heritage Thrift and Loan Co., (Western Heritage) is a Utah chartered industrial loan corporation and is subject to the jurisdiction of the Commissioner of Financial Institutions of the State of Utah pursuant to Section 7-1-501(5) Utah Code Annotated (Repl. Vol. 1C 1982).

3. Western Heritage's main office is located in Salt Lake County, Utah.

4. This Court has jurisdiction of this matter pursuant to Section 7-2-2, Utah Code Annotated (Repl. Vol. 1C 1982).

5. Petitioner has filed this action pursuant to Section 7-2-2, Utah Code Annotated (Repl. Vol. 1C 1982), to provide the Court with supervisory jurisdiction to review the actions of the Commissioner and for an Order as provided in Chapter 2 of Title 7, Utah Code Annotated (Repl. Vol. 1C 1982), authorizing and directing her to take possession of Western Heritage. Petitioner has found, pursuant to Section 7-2-1, Utah Code Annotated (Repl. Vol. 1C 1982), that:

(a) Western Heritage is insolvent under the definition contained in Section 7-1-103(19) Utah Code Annotated (repl. Vol. 1C 1982).

(b) The remedies provided in Section 7-1-307, 7-1-308 and 7-1-313 Utah Code Annotated (Repl. Vol. 1C 1982) are ineffective or impracticable to protect the interests of Western Heritage's depositors, creditors and shareholders.

6. All conditions precedent under the law for Petitioner to take possession of Western Heritage have been met.

7. Pursuant to Section 7-2-7 Utah Code Annotated (Repl. Vol. 1C 1982) the taking of possession of Western Heritage by the Commissioner operates as a stay of the commencement or continuation of:

(a) Any judicial, administrative or other proceeding against Western Heritage, including service of process;

(b) Enforcement of any judgment against Western Heritage;

(c) Any act to obtain possession of property of or from Western Heritage;

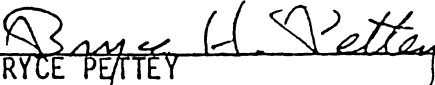
(d) Any act to create, perfect, or enforce any lien against property of Western Heritage;

(e) Any act to collect, assess, or recover a claim against Western Heritage; and

(f) The setoff of any debt owing to Western Heritage against any claim against Western Heritage.

WHEREFORE, Petitioner prays that this Court issue its Order authorizing and directing Petitioner and her special deputies or agents to take immediate possession of Western Heritage Thrift and Loan Co. and to thereupon vest her, by operation of law, with title to and the right to possession of all assets, the business and property of said corporation and to proceed to rehabilitate, reorganize, liquidate or give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liabilities of Western Heritage in such manner as she determines to be in the best interest of its depositors, creditors, shareholders and other parties in interest, and to do all other things in connection therewith as may be authorized by law. Petitioner further prays for authorization to appoint a liquidator or receiver for Western Heritage if she deems it to be appropriate to do so, and for a stay of proceedings against Western Heritage pursuant to Section 7-2-7 Utah Code Annotated (Repl. Vol. 1C 1982). Petitioner further prays for an Order requiring all persons to immediately turn over to Petitioner all property, assets or business of Western Heritage in their possession.

DATED this 22 day of September, 1986

  
BRYCE PETTEY  
Assistant Attorney General

FILED IN CLERK'S OFFICE  
Salt Lake City, Utah

SEP 23 1986

H. Dixon Hindley, Clerk 3rd Dist Court  
By K. [Signature]  
Deputy Clerk

DAVID L. WILKINSON #3472  
Attorney General  
STEPHEN G. SCHWENDIMAN #2891  
Chief, Assistant Attorney General  
BRYCE H. PETTEY #2593  
Assistant Attorney General  
Tax & Business Regulation Division  
Attorneys for Elaine B. Weis,  
Commissioner of Financial Institutions  
130 State Capitol Building  
Salt Lake City, Utah 84114  
Telephone: (801) 533-5319

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

IN THE MATTER OF THE POSSESSION  
BY THE COMMISSIONER OF FINANCIAL  
INSTITUTIONS OF WESTERN HERITAGE  
THRIFT AND LOAN COMPANY

:  
:  
:  
:  
:  
:

ORDER GRANTING POSSESSION

Civil No. C 86-7253

Judge Moffat

This matter came on before the Court, ex parte, on the \_\_\_\_ day of September, 1986, pursuant to the Petition for Possession of Western Heritage Thrift and Loan Company ("Western Heritage") by Elaine B. Weis, Commissioner of Financial Institutions of the State of Utah, and it appearing to the Court that Petitioner, as the Commissioner of Financial Institutions, has, under Section 7-2-1, Utah Code Annotated (Repl. Vol. 1C 1982), found that:

1 Western Heritage is insolvent under the definition contained in Section 7-1-103(19) Utah Code Annotated (Repl. Vol. 1C 1982).

E . . . T A  
Exhibit D

2. The remedies provided in Sections 7-1-307, 7-1-308 and 7-1-313 Utah Code Annotated (Repl. Vol. 1C 1982) are ineffective or impracticable to protect the interests of Western Heritage's depositors, creditors, stockholders and other parties in interest.

And it appearing to the Court that the purpose of this proceeding is to provide this Court with supervisory jurisdiction to review the actions of the Commissioner in accordance with and pursuant to Section 7-2-2, Utah Code Annotated (Repl. Vol. 1C 1982);

And it appearing to the Court that all other conditions of law have been met:

NOW THEREFORE, it is hereby Ordered that:

1. Elaine B. Weis, Commissioner of Financial Institutions of the State of Utah, and her special deputies or agents are authorized and directed to take immediate possession of Western Heritage and thereupon she is vested by this Order, and by operation of law, with title to and the right to possession of all assets, the business and property of said corporation.

2. Elaine B. Weis, Commissioner of Financial Institutions of the State of Utah, and her special deputies or agents are authorized and directed to rehabilitate, reorganize, liquidate, or give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liabilities of Western Heritage, and to do all other things in connection therewith as may be authorized by law.

3. Elaine B. Weis, Commissioner of Financial Institutions of the State of Utah, is authorized to appoint a liquidator or receiver of Western Heritage if she deems it appropriate to do so.

4. All persons are ordered and directed to immediately turn over to the Commissioner all of the assets, property and business of Western Heritage of any nature whatsoever in their possession or under their control.

5. This Order shall operate as a stay of the commencement or continuation of:

- (a) Any judicial, administrative or other proceeding against Western Heritage, including service or process;
- (b) Enforcement of any judgment against Western Heritage;
- (c) Any act to obtain possession of property of or from Western Heritage;
- (d) Any act to create, perfect, or enforce any lien against property of Western Heritage;
- (e) Any act to collect, assess, or recover a claim against Western Heritage; and
- (f) The setoff of any debt owing to Western Heritage against any claim against Western Heritage.

MADE AND ENTERED this 20 day of September, 1986

ATTEST  
H. DIXON HINDLEY  
CLERK  
By K. Antepas  
Deputy Clerk

BY THE COURT

[Signature]  
District Judge

STATE OF UTAH  
COUNTY OF SALT LAKE ) SS.  
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE FOREGOING AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK. WITNESS MY HAND AND SEAL OF SAID COURT THIS 10 DAY OF March 1987  
H. DIXON HINDLEY, CLERK [Signature] DEPUTY



Tab 10

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

OCT 21 3 50 PM '86

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FILED

*Linda Simpson*

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

*0*  
*2/6*

\_\_\_\_\_  
KENT L. BROWN,  
  
Petitioner,  
  
vs.  
  
ELAINE B. WEISS, Utah Commissioner  
of Financial Institutions, in her  
official capacity,  
  
Respondent.  
\_\_\_\_\_

PETITION FOR  
JUDICIAL REVIEW

Case No. 86-8004

Judge ~~JUDITH M. BILLINGS~~

Kent L. Brown petitions the Court as follows:

1. This action is brought pursuant to the provisions of the Financial Institutions Act of 1981, as amended, as set forth at § 7-1-714 of the Utah Code Annotated, 1953, as amended, in that Petitioner seeks judicial review by the Court of an order, decision, ruling and other act by the Commissioner of Financial Institutions under Title 7.

2. Kent L. Brown is a resident of Salt Lake County, Utah, who was, prior to September 23, 1986, a majority shareholder in Western Heritage Thrift & Loan Company.

3. On or about September 23, 1986, Elaine B. Weiss, as the duly appointed and acting Commissioner of Financial Institutions, acted by order, decision, ruling or otherwise to take possession

Exhibit 10

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of Western Heritage Thrift & Loan Company, effectively denying Petitioner his ownership interest therein.

4. The action by Commissioner Weiss was arbitrary, capricious, an abuse of discretion, and otherwise contrary to law.

WHEREFORE, Petitioner seeks review by the Court of the Commissioner's actions, and the entry of appropriate orders reversing, setting aside, or appropriately modifying the action, decision, ruling, or order of Commissioner Weiss.

DATED this 21 day of October, 1986.



Michael J. Wilkins  
Larsen & Wilkins  
Attorneys for Petitioner

Petitioner's address:  
9383 South 700 East  
Sandy, Utah 84070

1922P.1

Tab 11

SEP 6 1988

*C. Porter*

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Chief, Assistant Attorney General  
BRYCE H. PETTEY (#2593)  
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Commissioner of Financial Institutions  
130 State Capitol Building  
Salt Lake City, Utah 84114  
Telephone: (801) 538-1299

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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|                                   |   |                        |
|-----------------------------------|---|------------------------|
| KENT L. BROWN,                    | : |                        |
|                                   | : | MEMORANDUM OPINION AND |
| Petitioner,                       | : | ORDER OF DISMISSAL     |
|                                   | : | WITH PREJUDICE         |
| vs.                               | : |                        |
|                                   | : | Civil No. C86-8004     |
| ELAINE B. WEIS, UTAH COMMISSIONER | : |                        |
| OF FINANCIAL INSTITUTIONS, IN HER | : | Judge David S. Young   |
| OFFICIAL CAPACITY,                | : |                        |
|                                   | : |                        |
| Respondent.                       | : |                        |

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The "Motion to Dismiss" of George Sutton, as Commissioner of Financial Institutions of the State of Utah ("Commissioner Sutton"), and as Commissioner of Financial Institutions of the State of Utah in possession of Western Heritage Thrift and Loan Co. ("Western Heritage") in proceedings styled In the Matter of the Possession by the Commissioner of Financial Institutions of Western Heritage Thrift and Loan Company, Civ. No. C86-7253 (Third Judicial District Court in and for Salt Lake County, State of Utah) ("Western Heritage"), and as successor to Elaine B. Weis as Commissioner of Financial Institutions, was called

for hearing at the appointed time on Monday, August 8, 1988. Petitioner Kent L. Brown ("Brown") was represented by Michael J. Wilkins, Esq., of TIBBALS, HOWELL & MOXLEY. The Commissioner was represented by Bryce H. Pettey, Assistant Attorney General. With Mr. Pettey were Gregory J. Sanders, Esq., of KIPP & CHRISTIAN, and Denton M. Hatch, Esq., of CHRISTENSEN, JENSEN & POWELL.

The Court, having considered the pleadings and memoranda filed by the parties and the arguments at hearing, and considering itself well-advised in the premises, hereby enters the following:

#### MEMORANDUM OPINION

The statutes that are applicable in determining issues in these proceedings are the statutes that were in force and effect on the date the alleged cause(s) of action arose. As the Commissioner's determination and order to take possession of Western Heritage were made on or about September 22, 1986, the statutes that were in force and effect on that date control the substance of these proceedings.

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In determining to take possession of Western Heritage, Commissioner Weis made a decision and entered an order which is subject to review by the appropriate court under Title 7, Utah Code Ann.

While general decisions and orders of the Commissioner are subject to review by the appropriate court under Utah Code Ann. § 7-1-708(1) (1981), the Legislature provided that when the Commissioner takes possession of a financial institution or other person subject to the jurisdiction of the Department, any person considering itself aggrieved by such taking must seek review of the appropriate

court under the provisions of Utah Code Ann. § 7-2-3(1) (Supp. 1986) under the well-known tenet of statutory construction that the specific provision takes precedence over the general provision

Utah Code Ann. § 7-2-3(1) (Supp. 1986) provides that any person considering itself aggrieved by the taking of possession of a financial institution must apply to the court to enjoin further actions of the Commissioner within ten (10) days of the Commissioner's taking of possession

The word "person", as used in Utah Code Ann. § 7-2-3(1) (Supp. 1986), includes "individuals". See Utah Code Ann. § 7-1-103(21) (Supp. 1986)

The Legislature reduced the time for applying for injunctive relief from the Court under Utah Code Ann. § 7-2-3(1) (Supp. 1986) from thirty (30) days to ten (10) days to allow the Commissioner to act with certainty more quickly after taking possession of an institution in preparing a plan of reorganization, rehabilitation or liquidation of the institution; time is of essence in dealing with closed financial institutions, and each day a financial institution remains closed its value lessens and the chances of depositors and other creditors of receiving full payment of deposits or billings, so reducing the time for applying for relief under Utah Code Ann. § 7-2-3(1) (Supp. 1986) allows the Commissioner to enact a plan after ten (10) days have passed after the taking of possession by the Commissioner if no application to the court has been made, with the Commissioner knowing that future challenges are barred from being prosecuted. The time limitation within Utah Code Ann. § 7-2-3(1) (Supp. 1986) is jurisdiction-

As this action was not commenced until twenty-nine (29) days after the Commissioner took possession of Western Heritage, the action must be

dismissed for lack of jurisdiction over the subject matter and for lack of jurisdiction over the Commissioner.

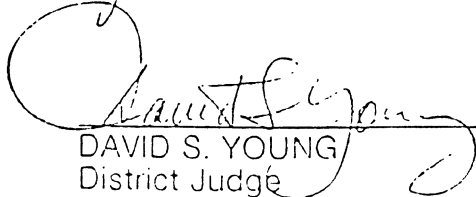
The only remedy available to this Court under Utah Code Ann. § 7-2-3(1) (Supp. 1986) is to order the Commissioner to surrender possession of the institution back to the owners. Brown, as one of the owners, does not seek through this action to have Western Heritage returned to his possession, but seeks other remedies. As no other remedies are available to the Court under Utah Code Ann. § 7-2-3(1) (Supp. 1986), the action must be dismissed.

Even if the proper statutory authority for bringing this action were Utah Code Ann. § 7-1-714 (1981), as Brown contends, the standard of review of the Commissioner's order is identical to that found in Utah Code Ann. § 7-2-3(1) (Supp. 1986), and the remedy is also the same -- the voiding of the Commissioner's order, which would result in Western Heritage being returned to the possession of Brown and the other owners. As Brown does not seek the return to his possession of Western Heritage, but seeks other relief which this Court is not empowered to grant under Utah Code Ann. § 7-1-714 (1981), this action must be dismissed.

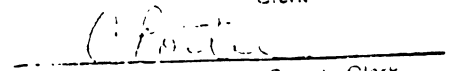
ORDER

The motion of the Commissioner to dismiss with prejudice is granted.

DATED this 17<sup>th</sup> day of September, 1988.

  
\_\_\_\_\_  
DAVID S. YOUNG  
District Judge

ATTEST  
H. DIXON HINDLEY  
Clerk

  
\_\_\_\_\_  
Deputy Clerk  
00707



CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of August, 1988, a true and correct copy of the foregoing was mailed, first-class, postage pre-paid, to:

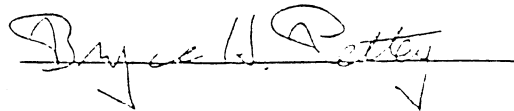
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A handwritten signature in cursive script, reading "Bryce H. Potter", is written over a horizontal line. There are small checkmarks or downward-pointing marks below the line on either side of the signature.