

1987

Kent L. Brown and Larry R. Hendricks,
individually v. Roy B. Moore, Elaine B. Weis, The
Department of Financial Institutions of Utah; and
Does 1 through 20 : Unknown

Utah Court of Appeals

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John K. Magnum; Richard M. Hymas; Scott M. Ellsworth; Nielsen & Senior.

NA.

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BY mf
DEPUTY CLERK

1. I am one of the two named Plaintiffs in this lawsuit and make this affidavit as to facts to which I can testify of my own knowledge. This affidavit updates my prior affidavit dated February 22 1991, and includes references to my recent deposition of September 12-13, 1996. Copies of deposition pages referred to in this memorandum are attached hereto as Exhibit 6.

2. I was involved on behalf of myself and Kent L. Brown, the other Plaintiff to this action, in negotiations with the Utah Department of Financial Institutions ("DFI") in late 1984, for the acquisition of the stock of Western Heritage Thrift & Loan Co. ("WHT&L"). Larry Hendricks Depo. at pages 23 and 24. These negotiations culminated in the execution of a contract with the DFI, dated December 26, 1984, for the transfer of said stock to Kent Brown and me. A copy of that contract is attached hereto as Exhibit "1."

3. I learned during the course of those negotiations that any offer made by Kent Brown and me would not be acceptable without a written month-by-month projection of WHT&L's financial picture extending at least three years into the future, and that any contract with the DFI for WHT&L had to be closed before the end of 1984. I understood that these projected financial statements, or "pro formas" as I often called them, would be an important part of the basis upon which any offer we might make to the State would be evaluated. Larry Hendricks Depo. at page 40. I understood that unless Kent Brown and I could show that we would be able to turn around WHT&L from its current condition of losing approximately \$30,000 (thirty thousand dollars) per month, to making a profit within that three-year period, we would have no chance of acquiring the stock of WHT&L. This understanding came from my participation in the negotiations with the DFI and discussions with the accountants at Main

Hurdman who were in the process of doing an independent audit of WHT&L books required by the State.

4. Attached hereto as Exhibit "2" is a copy of the final pro forma that Kent Brown and I prepared and submitted to the DFI in December, 1984, after our careful but limited review of WHT&L's books and records, and the management practices which had prevailed theretofore. This revised pro forma was submitted only after Ed Leary of the DFI engaged in new communications with me to salvage the negotiations after I had earlier indicated problems with the offer and after Kent and I had determined that an earlier offer we made was not feasible in light of new information we received from WHT&L concerning its performance in November, 1984.

5. This final pro forma projected that even after injection of new capital from Kent Brown and me of \$550,000 (five hundred fifty thousand dollars), WHT&L would continue to lose money every month until December, 1986, although at an ever decreasing rate. Through the first two years of our operation of WHT&L, this pro forma projected that we would lose over \$380,000 (three hundred eighty thousand dollars) of the new capital we were offering to contribute. However, it also projected that in the third full year of our operation of WHT&L, it would make a profit of over \$180,000 (one hundred eighty thousand dollars), thus partially offsetting our prior losses. Kent and I reasonably expected that WHT&L would continue to show a profit every month, even after the first three years of our operating it, as the trend in Exhibit "2" shows. Thereby, Kent and I would eventually recoup all of our original capital investment, although we did not expect this to happen until about the sixth year of our operation of WHT&L.

We projected that WHT&L would continue to make a profit in excess of \$25,000 (twenty-five thousand dollars) per month as far as we could project after the first three years of our operating WHT&L.

6. This final pro forma which we submitted to the DFI was also made the basis for measuring our performance, as expressed in our agreement with the Utah Industrial Loan Guaranty Corporation (the "ILGC"), a copy of which is attached hereto as Exhibit "3," which agreement was reviewed and found acceptable by the DFI, according to our contract with the DFI, as stated in Exhibit "1."

7. During these negotiations, I learned that under the laws of the State of Utah pertaining to minimum capital requirements for industrial loan corporations, of which WHT&L was one, WHT&L would not have had sufficient minimum capital legally to operate in 1985, even with our new injection of \$550,000 (five hundred fifty thousand dollars) of capital, unless the company also had other additional capital. The DFI agreed that this additional capital would be contributed in the form of net worth certificates purchased by the ILGC from WHT&L. Larry Hendricks Depo. at pages 93 and 94. Net worth certificates were not something with which I was familiar prior to my negotiations for acquiring the stock of WHT&L.

8. These certificates were explained and recommended to me by several of the people with whom I was negotiating and acquiring information in late 1984, which information was affirmed by the DFI. Larry Hendricks Depo. at page 94.

9. It was my understanding from these negotiations that the ILGC was an arm of the State of Utah and that therefore its promise to pay for these net worth certificates, evidenced by

the promissory notes to be issued by the ILGC, could be counted and would be recognized by the Defendants as the equivalent of cash for capital requirements purposes. Larry Hendricks Depo. at pages 95, 96, 102 and 103.

10. Had it not been for the use of these net worth certificates, I am aware of no way that Kent Brown and I could have legally operated WHT&L under the laws of the State of Utah. Further, our contract with the DFI states that the final offer from Kent and me "represents the only alternative to closing and liquidating [WHT&L]." Exhibit 1, § 2.3.

11. Our contract with the ILGC called for the ILGC to purchase from WHT&L: (1) a net worth certificate in the sum of \$1,000,000 (one million dollars) immediately upon closing of the transaction and our contribution of \$400,000 (four hundred thousand dollars) cash as new capital; (2) a second net worth certificate in the sum of \$250,000 (two hundred fifty thousand dollars) when Kent and I contributed \$150,000 (one hundred fifty thousand dollars) new capital in addition to our original contribution of \$400,000 (four hundred thousand dollars); (3) a third net worth certificate in the sum of \$250,000 (two hundred fifty thousand dollars) six months after the infusion of \$150,000 (one hundred fifty thousand dollars) "if [WHT&L'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 of a fourth net worth certificate issued by [WHT&L] in the sum of \$500,000 on or before January 1, 1986, if [WHT&L'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." Exhibit "3," paragraph no. 2 on page 2.

15. During the months after the closing on December 26, 1984, through September 23, 1986, Kent Brown was the Vice-President of Marketing and I was the President of WHT&L, and we were its sole shareholders. We were both actively involved in the management of WHT&L. As Kent and I operated WHT&L, we met and exceeded the projections we made in the final pro forma, which was the basis of our agreement with the DFI. We did so despite our discovery, after we began operating WHT&L, that its financial condition was far worse than what we had discovered before we agreed with the DFI to take it over. The additional net worth certificates were issued in a timely manner, as evidenced by the copies thereof attached hereto as Exhibit "4" and "5." The issuance of those certificates was approved by Defendant Elaine B. Weis as Commissioner of the DFI. (See first and last pages of Exhibits "4" and "5.") The last of these net worth certificates was approved by the DFI and issued on or about April 1, 1986.

16. In fact, because of the management experience and leasing expertise that Kent and I brought to WHT&L, it first began to show a profit in the month of January, 1986, which was 11 months ahead of the projections made in the pro forma. As of June 30, 1986, WHT&L had accumulated a profit for the first six months of 1986 of a little over \$28,000 (twenty-eight thousand dollars). However, in July, 1986, WHT&L suffered its first monthly operating loss of the year. This was due to an order Elaine Weis gave us on or about June 2, 1986, to stop soliciting or accepting new loan or leasing business, while giving the outward appearance that we were still doing business as usual. This deprived WHT&L of new loan and lease origination fees, which were an important part of our business.

17. This order came only a few weeks after Elaine Weis and the DFI, together with Governor Bangerter, communicated to us on or about May 2, 1986, that the State would not assume liability for the promises of the ILGC, which was to be shut down at the end of July, 1986. Until that May, I did not know that the ILGC did not have the full support and backing of the State of Utah. In fact Elaine Weis told me and others earlier that she believed the state would back the ILGC and its promises.

18. From May through September 23, 1986, WHT&L had enough income to meet all of its obligations as they came due, and was not therefore insolvent. If the net worth certificates it had issued were given credit the same as they were before May, 1986, WHT&L had adequate capital to continue operating under Utah law.

19. In early June, 1986, with the knowledge, blessing and approval of Defendants Weis and the DFI, Kent Brown and I began work on a plan of reorganization, for which we sought approval of the Federal Deposit Insurance Corporation ("FDIC"). When Kent and I met with the FDIC officials in mid-summer, we were told that our plan of reorganization was acceptable to the FDIC, and that it appeared we would qualify for FDIC coverage with this plan, so long as the State of Utah would back up the promises of the ILGC with regard to the net worth certificates. The State then made it known that the DFI would no longer do anything to stand behind the net worth certificates. Hendricks Depo. at p.98.

20. Until the summer of 1986, the DFI recognized the net worth certificates as counting toward meeting our regulatory capital requirements. As of July 31, 1986, we were told

to take them off our books by order of the DFI. Hendricks Depo. at p. 99. Without them, we didn't meet state regulatory requirements.

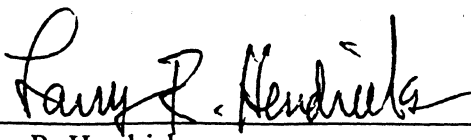
21. On September 22, 1986, the DFI, through Defendant Weis, sought and obtained an ex parte order of the Third Judicial District Court taking all title to WHT&L from Kent Brown and me. This was done without any prior notice or opportunity for hearing having been given to me, Kent Brown, or anyone else at WHT&L. An action filed by Kent Brown about twenty-nine (29) days after the taking was later held to be untimely filed.

22. Were it not for the fact and manner of the DFI taking WHT&L in the summer and fall of 1986, Kent and I could and would have continued to operate WHT&L at a profit into the foreseeable future as far as we then could see.

23. Because the State of Utah, through the DFI, stepped in and took WHT&L from us, contrary to the express and implied provisions of our agreement with the DFI, Kent Brown and I were deprived of our original capital investment of \$550,000 (five hundred fifty thousand dollars), and the reasonable expectation of substantial profit from the operation of WHT&L.

24. Neither the State of Utah, the DFI, nor any other person or entity has compensated Kent Brown or me for this property and property rights taken from us.

DATED this 14th day of March, 1997.



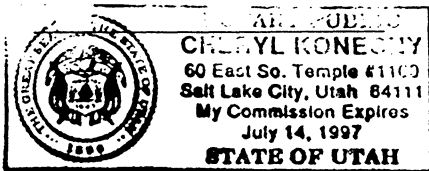
Larry R. Hendricks

STATE OF UTAH)
)
) :SS.
COUNTY OF SALT LAKE)

SUBSCRIBED and SWORN to before me this 4th day of March, 1997.

Cheryl Konecny
Notary Public
Residing at: Davis County, Utah

My commission expires:



AGREEMENT

This Agreement, made and entered into this 26th 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:

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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:

~~XXXXXX~~

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 26th 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 26th 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 28th 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	9102,569
Cash Investments	272,108
Investment GNMA Pools	153,731

Total Cash & Investments	9528,408
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Loans & Other Receivables

Installment Loans	4,317,919
Leases Receivable	1,603,273
Factoring Receivable	469,240
Real Estate Contracts	996,239

Total Gross Receivables	7,386,670
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Accrued Interest	325,466
Residual Value of Leases	137,742
Unearned Discount on Loans	
Leases and Factoring	(456,227)
Allowance for Losses	(565,268)

Total Net Receivables	6,828,383
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Other Assets

Building and Equipment	597,169
Accumulated Depreciation	(95,083)
Real Estate held for Resale	1,333,038
Other Property held for Resale	106,034
Other Assets	179,995

Total Other Assets	1,779,152
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TOTAL ASSETS	\$11,370,644
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EXHIBIT "A"

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Certificates of Deposits	10,777,756
Passbook Deposits	(1,577,757)
Accrued Interest on Thrift	200,771
	-
Total Deposits	(10,707,756)
Current Liabilities	
Accounts Payable	(73,222)
Security Deposits	(44,627)

Total Current Liabilities	(117,979)
Long-Term Liabilities	
Notes Payable	(153,010)
Mortgages Payable	(651,543)

Total Long-Term Liabilities	(804,557)

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	292,648

TOTAL LIABILITIES AND STOCKHOLDERS EQUITY	(\$9,370,644)
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WESTERN HERITAGE THRIFT AND LOAN
STATEMENT OF OPERATIONS

	For the month ended July 1 thru 30-Nov-84	For the period 30-Nov-84
INCOME		
Interest on Loans, Leases & Factoring	\$104,733	\$517,482
Interest on Investments	3,402	18,390
Other	9,025	51,867
Total Income	117,159	587,739
OPERATION EXPENSES		
Interest on Deposits	77,048	386,321
Salaries	15,441	88,746
Other Operation Expenses	60,535	297,550
Total Operation Expenses	153,024	772,817
PROFIT/(LOSS)	(\$35,865)	(\$195,077)

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. Gundersen
Steven K. Gundersen
Comptroller
Western Heritage Thrift & Loan

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INCOME

Interest Income on Loans	\$66,155	107,115
Earned Lease Income	18,537	28,111
Factoring	72,71	11,111
Other Loan Income	1,211	3,111
Other Lease Income	2,679	11,111
Investment Income	3,402	8,111
Rent on ORE	3,648	13,111
Credit Life & A/H	462	3,111
Other	25	1,111
Gain on sale of Property held	(0)	(1,111)
Gain on sale of ORE	(0)	1,111
Total Income	117,157	167,111

EXPENSES

Interest on Deposits	77,048	106,111
Loan & Lease Cost	21	16,111
Other Cost of Money	2,619	14,111
Salaries	15,441	58,111
Data Processing	1,705	7,111
Advertising	476	1,111
Administration Fee	7,000	15,111
Audit	11,601	15,111
Bad Debt	0	1,111
Depreciation	3,610	17,111
Professional Services	4,500	21,111
Interest on ORE Mortgages	4,029	27,111
Interest	3,402	11,111
Legal	2,311	17,111
Land Lease	1,510	1,111
Rent	500	1,111
Repair & Maint DP Sig-	55	1,111
Taxes	5,017	11,111
Printing	1	1,111
Other	11	1,111
TOTAL EXPENSES	153,124	271,111

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Western Heritage Thrift and Loan
Projected Income Statement

INCOME:

	JUN-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
Installment Loan Interest	985,342	984,636	983,953	983,292	982,654	982,040	981,449	980,882	980,340	979,822	979,329	978,862	992,641
Factoring	15,525	16,240	16,475	17,359	18,225	19,090	19,975	20,850	21,725	21,600	22,275	22,950	230,650
Lease Income	23,745	25,911	30,077	33,243	36,409	39,575	42,741	45,907	49,073	52,239	55,405	58,571	493,095
Investment Interest	2,707	2,632	2,557	2,482	2,407	2,332	2,257	2,182	2,107	2,032	1,957	1,882	40,734
ORE Rent	4,402	4,255	4,108	4,001	3,913	3,825	3,737	3,650	3,562	3,475	3,387	3,300	45,733
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)
TOTAL INCOME	110,221	121,074	125,949	129,217	132,969	136,713	140,481	144,273	148,099	151,931	155,797	159,668	1,664,834

EXPENSES:

Cost of Money	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
Savings	63,000	64,500	66,000	67,500	69,000	70,500	72,000	73,500	75,000	76,500	78,000	79,500	853,000
Thrift Certificates	10,113	10,219	10,325	10,432	10,539	10,647	10,755	10,862	10,970	11,078	11,186	11,294	124,467
Salaries	8,343	8,578	8,815	9,053	9,294	9,537	9,781	10,025	10,270	10,514	10,759	11,004	116,046
Provision for Loss	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	46,272
Goodwill Amortization	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
Depreciation	2,500	2,515	2,529	2,544	2,559	2,574	2,589	2,604	2,619	2,634	2,649	2,665	30,901
Advertising	1,783	1,713	1,723	1,733	1,743	1,753	1,763	1,774	1,784	1,795	1,805	1,816	21,185
Auto Travel & Entertainment	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
Professional Fees	1,000	1,006	1,012	1,018	1,024	1,030	1,036	1,042	1,048	1,054	1,060	1,066	12,933
Office Supplies	2,174	2,186	2,199	2,212	2,225	2,238	2,251	2,264	2,277	2,290	2,304	2,317	28,336
Payroll Taxes	1,600	1,609	1,619	1,628	1,638	1,647	1,657	1,666	1,676	1,686	1,696	1,706	19,820
Data Processing	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
ILRC Assessments	150	150	150	150	150	150	150	150	150	150	150	150	1,800
Conventions	1,500	1,500	1,510	1,520	1,535	1,544	1,553	1,562	1,571	1,581	1,590	1,599	18,369
Telephone	1,753	1,763	1,774	1,784	1,794	1,805	1,815	1,825	1,836	1,847	1,858	1,869	21,724
Insurance-Health	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
Interest on Notes Payable	554	557	560	564	567	570	574	577	580	584	587	591	6,865
Other	250	250	250	250	250	250	250	250	250	250	250	250	3,000
Memberships	500	503	506	509	512	515	518	521	524	527	530	533	6,196
Property Tax	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
Land Lease	245	246	248	249	251	252	254	255	257	258	260	261	3,036
Janitorial	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
Employee Benefits	400	403	406	408	411	414	417	420	423	426	429	432	5,184
Postage	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
Repair & Maintenance	853	853	853	853	853	853	853	853	853	853	853	853	10,236
Rent	200	201	202	204	205	206	207	208	210	211	212	213	2,475
Taxes & Licenses	200	200	200	200	200	200	200	200	200	200	200	200	2,400
Dues & Subscriptions	200	200	200	200	200	200	200	200	200	200	200	200	2,400
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
ORE Expense	3,500	3,415	3,330	3,245	3,160	3,075	2,990	2,905	2,820	2,735	2,650	2,565	30,375
Board and Chairman Fees	500	500	500	500	500	500	500	500	500	500	500	500	6,000
TOTAL EXPENSE	140,414	150,590	152,769	154,951	157,136	159,324	161,516	163,711	165,909	168,110	170,315	172,523	1,925,266
NET INCOME	(30,193)	(29,516)	(27,820)	(25,734)	(24,167)	(22,611)	(21,035)	(19,437)	(17,810)	(16,179)	(14,518)	(12,855)	(124,432)

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

Projected Income Statement		JAN-66	FEB-66	MAR-66	APR-66	MAY-66	JUN-66	JUL-66	AUG-66	SEP-66	OCT-66	NOV-66	DEC-66	TOTAL-1966
INCOME:														
Installment Loan Interest		178,789	178,241	165,718	163,219	168,715	168,257	168,179	168,091	168,835	168,016	168,017	168,857	1,925,377
Factoring		23,625	24,306	24,375	25,659	26,325	27,000	27,675	28,350	29,025	29,700	30,375	31,050	328,858
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	949,000
Investment Interest		4,287	4,332	4,377	4,422	4,466	4,511	4,556	4,601	4,646	4,691	4,736	4,781	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	38,331
Late Charges		2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	36,000
Loan Fees		1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	24,000
Other		(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)
Provision for Stop Interest														
TOTAL INCOME		155,975	159,785	163,621	167,441	171,366	175,276	179,317	183,368	187,391	191,425	195,471	201,189	2,135,365
EXPENSES:														
Cost of Money		19,167	19,503	20,000	20,417	20,833	21,250	21,667	22,083	22,500	22,917	23,333	23,750	257,500
Savings		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
Thrift Certificate		19,422	19,536	19,650	19,764	19,878	19,992	20,106	20,220	20,334	20,448	20,562	20,676	248,694
Salaries		11,200	11,200	11,200	11,200	11,200	11,200	11,200	11,200	11,200	11,200	11,200	11,200	132,221
Provision for Loss		3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,667
Goodwill Amortization		2,681	2,681	2,681	2,681	2,681	2,681	2,681	2,681	2,681	2,681	2,681	2,681	43,200
Depreciation		1,825	1,825	1,825	1,825	1,825	1,825	1,825	1,825	1,825	1,825	1,825	1,825	22,638
Advertising		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
Auto Travel & Entertainment		1,072	1,072	1,072	1,072	1,072	1,072	1,072	1,072	1,072	1,072	1,072	1,072	13,288
Professional Fees		2,331	2,344	2,356	2,372	2,386	2,399	2,413	2,428	2,442	2,455	2,470	2,485	28,883
Payroll Taxes		1,716	1,726	1,736	1,746	1,756	1,766	1,777	1,787	1,797	1,808	1,818	1,829	21,852
Office Supplies		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
ILRC Assessment		150	150	150	150	150	150	150	150	150	150	150	150	1,800
Conventions		1,600	1,610	1,627	1,637	1,646	1,656	1,666	1,675	1,685	1,695	1,705	1,715	19,333
Telephone		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
Insurance-Health		6,142	6,050	5,958	5,867	5,775	5,683	5,592	5,500	5,408	5,317	5,225	5,133	67,658
Interest on Notes Payable		594	598	601	605	608	612	615	619	622	625	628	633	7,362
Other		250	250	250	250	250	250	250	250	250	250	250	250	3,000
Memberships		536	539	542	546	549	552	555	558	562	565	568	572	6,844
Property Tax		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
Land Lease		263	264	266	267	269	270	272	274	275	277	278	280	3,366
Janitorial		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
Employee Benefits		515	518	521	524	527	530	533	536	539	542	546	549	6,578
Postage		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
Repair & Maintenance		653	653	653	653	653	653	653	653	653	653	653	653	7,836
Rent		214	216	217	218	220	221	222	223	225	226	227	229	2,748
Taxes & Licenses		382	384	386	388	390	391	393	395	397	399	401	403	4,824
Dues & Subscriptions		751	755	759	764	768	773	777	782	786	791	796	800	9,600
Utilities		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
Legal & Accounting		2,478	2,353	2,300	2,223	2,137	2,052	1,967	1,882	1,797	1,712	1,627	1,541	18,117
ORE Expense		500	500	500	500	500	500	500	500	500	500	500	500	6,000
Board and Chairman Fees														
TOTAL EXPENSE		175,773	177,977	180,184	182,394	184,608	186,825	189,046	191,271	193,500	195,732	197,963	200,209	2,255,489
NET INCOME		(19,798)	(18,191)	(16,563)	(14,953)	(13,242)	(11,549)	(9,729)	(7,903)	(5,409)	(3,307)	(1,492)	998	(112,124)

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

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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

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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

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".

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;

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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.

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EXHIBIT "B"

PROMISSORY NOTE

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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

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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 _____

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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]

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WATKISS & CAMPBELL

Larry R. Hendricks, CPA

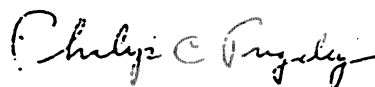
December 20, 1984

Page Two

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



Philip C. Pugsley

PCP:fjk

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WESTERN HERITAGE THRIFT & LOAN COMPANY
NET WORTH CERTIFICATE

\$500,000

December 31, 1985

FOR VALUE RECEIVED, Western Heritage Thrift & Loan Company, a Utah corporation ("Issuer") promises to pay to the Industrial Loan Guaranty Corporation of Utah, a non-profit corporation, the total principal sum of Five Hundred Thousand and no/100 Dollars (\$500,000.00), 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 July, October, January and April hereafter. Principal shall be paid in annual installments of \$62,500 each, the first such installment being due and payable December 28, 1994, and a like installment being due and payable on December 28 of each succeeding calendar year until December 28, 2002, 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 December 26, 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:

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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 Issuer to another person; ~~or should there be a sale, merger or consolidation of Issuer 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, Western Heritage Thrift & Loan Company 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 as of the 31st day of December, 1985.

WESTERN HERITAGE THRIFT & LOAN COMPANY

By *Larry R. Hendricks*
Its President

Attest:

Marilee Kehl
Secretary

Approved:

The Department of Financial
Institutions of the State of Utah

By *Elaine B. Weis*
Elaine B. Weis, Commissioner

WESTERN HERITAGE THRIFT & LOAN COMPANY
NET WORTH CERTIFICATE

\$250,000

April 1, 1986

FOR VALUE RECEIVED, Western Heritage Thrift & Loan Company, a Utah corporation ("Issuer") promises to pay to the Industrial Loan Guaranty Corporation of Utah, a non-profit corporation, the total principal sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), 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 July, October, January and April hereafter. Principal shall be paid in annual installments of \$31,250 each, the first such installment being due and payable December 28, 1994, and a like installment being due and payable on December 28 of each succeeding calendar year until December 28, 2002, 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 December 26, 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:

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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 Issuer to another person; or should there be a sale, merger or consolidation of Issuer 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, Western Heritage Thrift & Loan Company 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 as of the 1st day of April, 1986.

WESTERN HERITAGE THRIFT & LOAN COMPANY

By *Larry R. Hendricks*
Its President

Attest:

Frederick Kehl
Secretary

Approved:

The Department of Financial
Institutions of the State of Utah

By *Elaine B. Weis*
Elaine B. Weis, Commissioner

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

KENT L. BROWN and LARRY R.
HENDRICKS, individually,

Plaintiffs,

v.

ROY B. MOORE, ELAINE B. WEIS,
THE DEPARTMENT OF FINANCIAL
INSTITUTIONS OF UTAH; and
DOES 1 through 20,

Defendants.]

Civil No. C-87-7906
Judge Wilkinson

DEPOSITION UPON ORAL EXAMINATION

OF

LARRY R. HENDRICKS

Taken Pursuant to Notice and the Utah Rules
of Civil Procedure

Thursday, September 12, 1996, 9:00 a.m.

Friday, September 13, 1996, 2:00 p.m.

At the law offices of:

Christensen & Jensen
Attorneys at Law

175 S. West Temple, Suite 510
Salt Lake City, Utah 84101

By: Peggy Grover, RMR, Notary Public, License #7801



Associated Professional Reporters

10 West Broadway, Suite 200, Salt Lake City, UT 84101
(801) 322-3441 FAX (801) 322-3443

1 and organizations necessary to secure approval for the
2 purchase and do you remember the individuals that were
3 identified?

4 A. The Department of Financial Institutions.

5 Q. And did he identify any individuals in the
6 Department of Financial Institutions?

7 A. Elaine Weis I think.

8 Q. Did you know at that time that she was the
9 commissioner of the Financial Institutions?

10 A. No.

11 Q. Did you know of her?

12 A. No.

13 Q. Then paragraph 13 recites, quote: On
14 November 6, 1984 Brown, Hendricks and Munsee met at
15 Hendrick's office to refine the purchase plan. End of
16 quote. This would be five days after the initial call.
17 What, if anything, happened between November 1 and
18 November 6?

19 A. I don't remember anything particular. I do
20 know that Kent Brown lived out of state and required
21 sufficient travel notice and time to come to Salt Lake
22 for such a meeting.

23 Q. Do you remember whether Mr. Brown's name was
24 mentioned in your initial conversation with Mr. Munsee?

25 A. I don't recall exactly mentioning his name.

1 Q. Did you indicate to Munsee that you would
2 need to have some partner in with you to be able to make
3 the investment?

4 A. Sure.

5 Q. Okay. And I take it at least there was a
6 contact between you and Brown some time between November
7 1 and November 6?

8 A. Yes.

9 Q. Okay. Was Mr. Brown living in Las Vegas at
10 that time?

11 A. No, he was living in Elko, Nevada, Lamoille,
12 which is outside of Elko a few miles.

13 Q. And was he at that time operating your
14 leasing business over there?

15 A. He was active in IBS Leasing, yes.

16 Q. And did it have an office in Lamoille or
17 Elko?

18 A. At his home.

19 Q. Okay. So I take it you called Mr. Brown and
20 advised him of the conversation you had had with Mr.
21 Munsee; is that right?

22 A. Yes.

23 Q. And I suppose asked him if he would be
24 interested in that kind of a venture?

25 A. Yes.

1 A. Well, we had a record of getting a certain
2 rate of return on the leases and we were told what we
3 were going to have to expect to pay for additional
4 thrift deposits.

5 Q. In other words, the rate of interest you
6 would have to pay depositors?

7 A. Yes.

8 Q. And did you understand that the Department of
9 Financial Institutions would require a pro forma in
10 order to approve the transaction?

11 A. Yes.

12 Q. Going to paragraph 17 of the complaint,
13 quote. "On November 15, 1984 Hendricks and Jerry D.
14 James, an attorney, met Moore at Moore's office. End of
15 quote. Is Jerry James the one that you previously
16 identified as Dennis James?

17 A. Jerry James is Dennis James' brother.

18 Q. I see. You say he is an attorney?

19 A. Yes, both of them are.

20 Q. And at this point in time was James
21 representing you?

22 A. Yes.

23 Q. And when you speak of Moore's office, is that
24 his law office?

25 A. Yes.

1 Q. All right. You met George Sutton on November
2 15th, the time when you took the application over?

3 A. I believe that's right.

4 Q. Did you meet him at any other time before
5 December 26th, 1984?

6 A. I think so but I couldn't tell you the exact
7 date.

8 Q. Do you remember anything about the
9 circumstances of it?

10 A. No.

11 Q. And besides meeting with Ed Leary on November
12 15th and one other occasion described in the complaint,
13 you had a few telephone conversations with him; is that
14 correct?

15 A. Yes.

16 Q. Now, did you have any contacts with any other
17 member of the Department prior to December 26, 1984?

18 A. I don't remember that I did.

19 Q. Did you ever meet Gary Cox?

20 A. I think, yes, I did.

21 Q. Before December 26, 1984?

22 A. I think I did, yes.

23 Q. Do you remember the circumstances of that?

24 A. Not particularly except he was introduced as
25 the auditor for Western Heritage Thrift or the-- I guess

1 auditor is the best way to describe it, liaison.

2 Q. Possibly examiner?

3 A. Yes.

4 Q. Did you have any conversation with him?

5 A. I may have done.

6 Q. You don't recall any details of it?

7 A. I know at one point in time I received some
8 information on Western Heritage from him. I think it
9 was in response to a request that I had, they directed
10 me to him.

11 Q. You think that was before December 26th?

12 A. Yes.

13 Q. But you don't recall what it was that you
14 were looking for at that time?

15 A. It was a copy of the examination of Western
16 Heritage Thrift and Loan.

17 Q. By the Department?

18 A. Yes.

19 Q. And did he supply you with a copy of that?

20 A. Yes.

21 [Exhibit No. 80 Marked for identification.]

22 Q. (Mr. Christensen) You now have before you
23 Exhibit 80; can you identify that?

24 A. It appears to be a copy of the examination of
25 June 30th, 1984 of Western Heritage Thrift and Loan.

1 A. No.

2 Q. Did the Department offer to make available to
3 you other records in its possession?

4 A. I don't remember that they did.

5 Q. Would you deny that they did?

6 A. I just have no recollection.

7 Q. One way or the other?

8 A. One way or the other.

9 Q. You had reason to believe that the
10 information provided to you by Western Heritage was
11 suspect, didn't you?

12 A. Yes.

13 Q. What efforts did you make to try to verify or
14 disprove what Western Heritage was representing to you
15 was correct?

16 A. Well, I met with Roy Moore, I met at Western
17 Heritage with their personnel, I had the audit report of
18 Main Hurdman, I had the audit report or the examination
19 of the State. I think I did everything that I knew how
20 to do at that time.

21 Q. If you had been engaged by Western Heritage
22 to perform an audit of its records, you would have done
23 more than you did, wouldn't you?

24 A. Yes.

25 Q. You realized that Main Hurdman was unwilling

1 A. I can't remember who specifically told me but
2 it is in a lot of the documents that we have been
3 reviewing for the last couple of days. If not there, it
4 is in documents that John has at his office in files and
5 I think Richard Robinson, who was president of ILGC, at
6 one time told me of the efforts.

7 Q. Was Mr. Robinson associated with one of the
8 thrifts?

9 A. Yes, Commerce, the one that Larry Miller had.

10 Q. Do you know where he is now?

11 A. I do not.

12 Q. Anything else that supports subpart B?

13 A. I guess the Department's encouragement to get
14 all of the thrift and loans converted to FDIC that was
15 ongoing as early as December of 1984, and I think we
16 should have known about those efforts and those plans.

17 Q. You didn't become aware of those during the
18 time you were negotiating for the purchase of Western
19 Heritage?

20 A. No.

21 Q. Subpart C says: "The ILGC would supply
22 \$2,200,000 in support to Western Heritage by issuing net
23 worth certificates, and the use of net worth
24 certificates was a standard method of rehabilitating
25 distressed thrifts in Utah. When did you first hear of

1 net worth certificates?

2 A. It was during the preparation of the pro
3 forma that the Department of Financial Institutions
4 requested.

5 Q. Who told you about them?

6 A. I don't remember who was the first to tell me
7 about them.

8 Q. Did anyone in the Department tell you about
9 them?

10 A. They could have.

11 Q. Can you say positively anyone did?

12 A. I can say that I had discussions with those
13 in the Department regarding them during the negotiation.

14 Q. With whom did you discuss net worth
15 certificates?

16 A. I am sure it would have been Ed Leary.

17 Q. Do you remember what he told you about them?

18 A. I don't.

19 Q. Did anybody from ILGC explain net worth
20 certificates to you?

21 A. I can't be certain. I know that Charley
22 Johnson was conversant about them.

23 Q. And he was a Main Hurdman functionary and was
24 also a member of ILGC; is that right?

25 A. Yes.

1 Q. Do you remember what he told you about them?

2 A. No. He might have just verified the fact,
3 verified how they worked, because I think I understood
4 them about the time I met Charley Johnson and we started
5 the pro forma.

6 Q. Where do you think you got your understanding
7 initially?

8 A. I can't remember.

9 Q. You knew, didn't you, that they were offset
10 with promissory notes and really they were just paper?

11 A. No, I didn't know at that time.

12 Q. When did you find out about that?

13 A. About the time that we took control.

14 Q. Before you signed the agreement of December
15 26th?

16 A. I am not sure exactly the day I found out.
17 The first time we signed the net worth certificate I
18 think I was asked to sign a promissory note at the same
19 time.

20 Q. The ILGC did in fact issue net worth
21 certificates as provided in the contract, didn't it?

22 A. Yes.

23 Q. And net worth certificates had been used in
24 rehabilitating distressed thrifts in Utah prior to
25 Western Heritage, had they not?

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1 A. Well, they were issued. I guess I take issue
2 with rehabilitating. It cured the capital impairment
3 and were recognized as capital by the State of Utah. As
4 far as it being a standard practice, I don't think that
5 was true and as far as rehabilitating, I am not sure
6 that was true either.

7 Q. Well, what I understand you to be saying is
8 that in other cases where they had been used, the
9 rehabilitation efforts have not been successful; is that
10 what you are telling me?

11 A. That's correct. It would have been nice to
12 know that, too.

13 Q. Let's go to subpart d: "The use of net worth
14 certificates would make it possible for Brown and
15 Hendricks to operate Western Heritage for a sufficient
16 time to, quote, work out, end quote, the financial
17 difficulties existing on December 26, 1984." What's
18 meant by that?

19 A. Well, we purchased Western Heritage and gave
20 the pro forma, the money, and felt comfortable that we
21 were getting back sufficient time to work out the
22 financial difficulty that existed in Western Heritage.
23 Pro forma or pro formas indicated that we needed to have
24 at least three years, it was important to us. We
25 wouldn't have bought the thrift and loan if we thought

1 Financial Institutions told us what we needed to know
2 about the condition of the ILGC. And by letting the net
3 worth certificates be issued in the way that they were
4 issued, I think represents that they represented that
5 the ILGC could meet their obligations.

6 Q. Say that last again, please.

7 A. I think that the State Department of
8 Financial Institutions, by allowing the net worth
9 certificates to be approved and issued in the way that
10 they were-- what's the rest of the sentence?

11 [Record read.] I am lost now. I
12 don't know if I could do any better than that if I tried
13 it again.

14 Q. Did you ever ask to see any financial
15 information about the ILGC?

16 A. I was not smart enough to ask at that time. I
17 really believed that the ILGC and the Department of
18 Financial Institutions were working in tandem and for
19 all I knew the ILGC was a quasi corporation of the State
20 of Utah because all of the negotiations I had with the
21 Department seemed to include the ILGC and they seemed
22 comfortable in representing what the ILGC could do to
23 rehabilitate the thrift and loan and I just didn't feel
24 any sense of uncomfortability with the ILGC at that
25 point in time. I was not even sure if they had

1 financial statements, I guess, or needed them.

2 Q. Following subparagraph f., and at the
3 conclusion of paragraph 26 of the complaint it says:
4 "Throughout the course of their contacts with the
5 Department, Hendricks and Brown were misled concerning
6 the true nature of the Department's intentions and its
7 relationship with the ILGC. At no time were Hendricks
8 and Brown aware the ILGC was, in the words of Elaine
9 Weis, a 'marketing gimmick.'" My first question is:
10 When and where did Elaine Weis characterize the ILGC as
11 a marketing gimmick?

12 A. If one of her talks before the ILGC trustees,
13 I think it was 1985.

14 Q. Did you attend that meeting?

15 A. Yes, I did.

16 Q. Anything else other than what you have
17 already told me that would support the allegations of
18 that last paragraph that I just read?

19 A. Nothing else than what is in that paragraph
20 except to say that I think there was a need for the
21 Department of Financial Institutions to close the
22 transaction before December 31st. As it was expressed
23 to me later the year end financials would have been
24 published in the paper on December 31st, and after that
25 time Western Heritage could not be rescued, it was a fix